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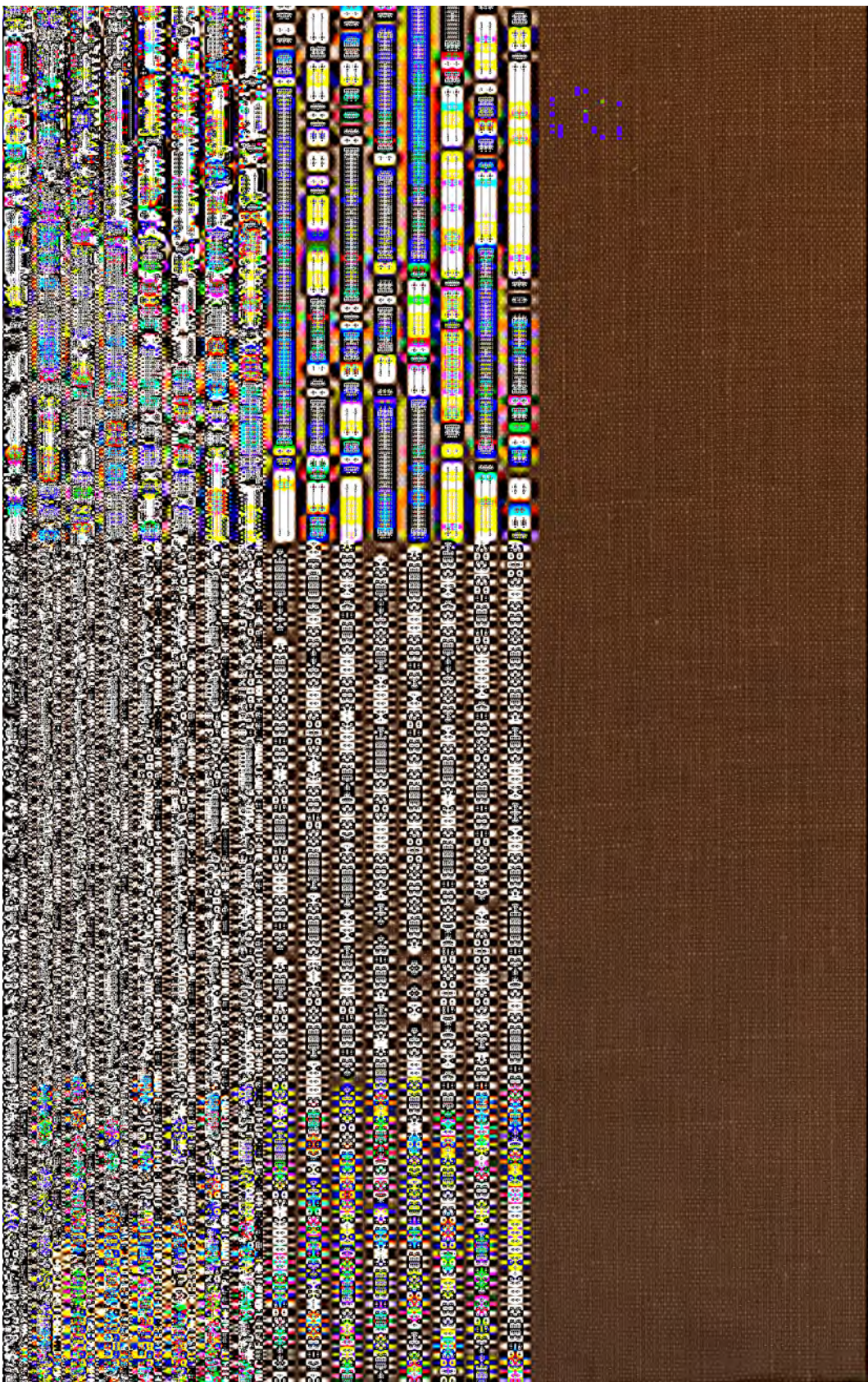
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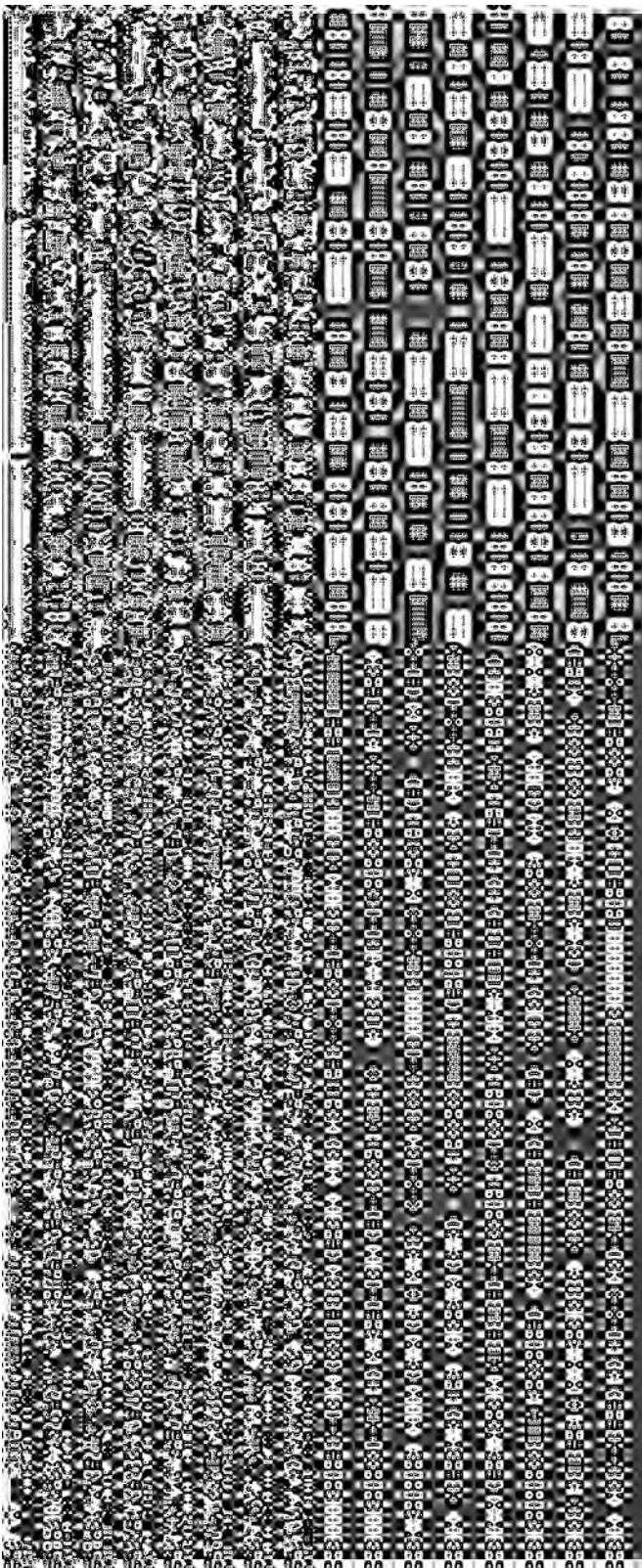
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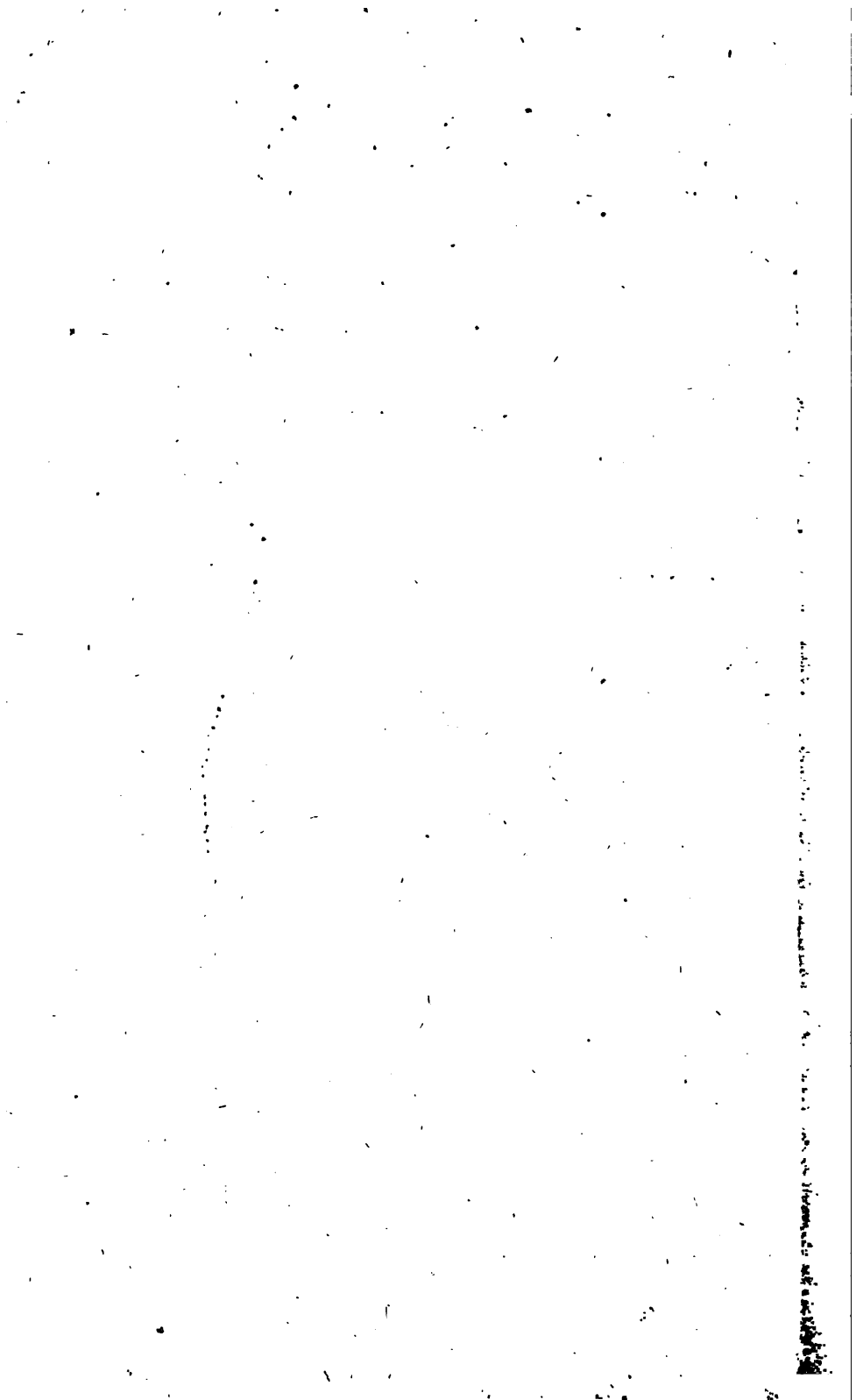
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1807.

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ADDRESS.

THE Laws in force which more immediately concern Country Gentlemen, Clergymen, Farmers, and others, who reside at a distance from the metropolis, have hitherto remained scattered up and down in a multiplicity of volumes; but I have undertaken the arduous task of searching for them among the mass of materials in which they have been buried, and of collecting, arranging, and methodizing them, for the accommodation of those who may occasionally require their aid.

The utility and necessity of this work will doubtless be admitted, when it is recollected that the Statutes at large consist of many thick volumes in quarto, and that *Viner's Abridgement of the Law* exceeds twenty large volumes in folio, exclusive of the Supplement. From these, and an infinite variety of other law classics, I have selected whatever appeared essential for furnishing the Country Reader with legal information, to enable him to be a competent Lawyer in matters which concern himself: for as Judge *Blackstone* judiciously observes, (in his Introduction to his Commentaries,) "It is incumbent upon every man to be acquainted with those laws, at least, with which he is immediately concerned."

To purchase the libraries which have been consulted in this compilation would amount to a sum not easily to be conceived: and, to find the necessary articles which were dispersed among an immense mass of materials, I have almost exhausted a large stock of patience and perseverance. I have the satisfaction, however, of having endeavoured to render myself useful to the world; and am not without hopes of obtaining the approbation of my readers. If industry and accuracy are essential towards the completion of a performance of this nature, I can venture to affirm, without fearing the imputation of vanity, that I have no inconsiderable claim to the indulgence of the public.

W. M.

This NEW EDITION contains the following Additions and Improvements : being the Substance of the Statutes and adjudged Cases on these interesting Subjects, which have taken Place since the last Edition published in 1803.

Damages sustained by wilfully burning another person's barn. *Thurtell v. Inhabitants of Mulford and Lotkingland. Hill. 43 G. III.*

Burning a Millhouse, when not felony. *Hiles v. Inhabitants of Shrewsbury. E. 43 G. III.*

Further punishment by 42 G. III. for stealing turnips, potatoes, cabbages, parsnips, beans, peas, or carrots in grounds open or inclosed.

A carrier giving notice not to be answerable for any damages, will not in consequence thereof be excused. *Lyon v. Mell. Tr. 44 G. III.*

Goods delivered to be carried by the mail, paying no extra price. *Nicholson v. Willan. Mich. 45 G. III.*

New Regulations respecting carriages, &c by 43 and 44 G. III.

The custom of taking turf covered with grass from the manor is bad in law. *Wilson v. Willes, Knight. Hill. 46 G. III.*

Action lies for taking from the common what is dropped on it by the cattle. *Pindar v. Wadsworth. Hill. 42 G. III.*

By the 42 G. III. c. 107. Improvements are made respecting deer-stealing.

Keeping a dog and gun, not being qualified to kill game. *King v. Tolley. E. 48 G. III.*

Additional duty on horses, mares, and geldings, by 45 G. III. c. 13.

Inhabitants liable to repair public bridges. *K. v. West Riding of York. 7 East's Reports.*

A promise that a second horse shall be worth 80l. *Mills v. Sheward. Mich. 47 G. III.*

Conversation after the warranty of a horse. *Payne v. Whale. Hill. 46 G. III.*

* * * The Editors of the *Critical Review* have given the following Opinion of this useful Volume : "*The Country Gentleman's Lawyer* is a very useful Compilation for every person that wishes to possess some Knowledge of the Law, as it affects common Occurrences in Society. It is satisfactory to have a Source of Information at Hand, when an Opportunity does not offer of advising with a Man of Knowledge and Confidence : It may, indeed, be more beneficial frequently to guide one's Self by such Information, than by the weak or artful Counsels of ignorant or mercenary Practitioners: The Industry of this Author is highly commendable, because beneficial and useful to many members of Society : His Compilation appears judicious and correct."

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CONTAINING
*An accurate Digest of the Laws which relate principally to
Country Affairs.*

ASSIZES.

ENGLAND is divided into six circuits, and two England divided into circuits. judges are assigned by the king's commission to every circuit, who hold their assizes twice a year in every county, (except *Middlesex*, where the king's courts of record are held, and where his courts for his counties palatine are held), and have five several commissions, viz.

1. A commission of *oyer and terminer* (to hear and determine) directed to the judges, and many other gentlemen of the county, empowering them to hear and determine treasons, felonies, and other misdemeanors, whether the persons be in gaol or not. Commissions directed to the Judges.

2. A commission of *general gaol delivery*, directed to the judges and the clerk of assize associate; by which they are authorised to try every prisoner *in the gaol*, committed for any offence whatsoever; but only such prisoners as are *in the gaol*.

3. A *commission of assize*, directed to the judges and clerk of assize, as above mentioned.

4. A commission or writ of *nisi prius*, directed to the judges and clerk of assize, by which civil causes, brought to issue in the courts above, are tried in the vacation by a jury of twelve men of the county where the cause of action arises; and on return of the verdict of the jury to the court above, the judges there give judgment.

5. A commission of the peace, in every county of the circuits; and all justices of the peace of the county are bound to be present at the assizes; and sheriffs are also to give their attendance on the judges, or they shall be fined. *Bac. Elem.* 15, 16, &c.

B

By

Persons
who must
attend the
assizes.

By the precept for the general gaol delivery, the sheriff is commanded to attend there in person, with his under sheriff; and to give notice to all justices of the peace, mayors, coroners, escheators, chief constables, and bailiffs of hundreds and liberties, that they may be then and there with their rolls, records, indictments, and other remembrances, to do those things which to their offices appertain.

By virtue of which precept all justices of the peace and others above-mentioned, of the county where the judges have their assizes, are bound to be present: and if they neglect to attend without lawful impediment, the judge may fine them. *Cr. Circ. Com. 4.*

Witnesses
must at-
tend.

Easter term, 40 G. III. *King v. Ring*. A subpoena may be issued from the Crown Office, requiring a witness to attend at the assizes in the country, to give evidence in support of an intended prosecution for a felony; and the Court of King's Bench will grant an attachment against him, for not attending in obedience to the subpoena. 8 *Durnf. & East*. 585.

Who are to
make pre-
sentments.

By ancient custom, or, in other words, the common law of the land, before the arrival of the judges, the high constables issue their warrants to the petty constables, to make presentments, of all offences cognizable at the assizes, to furnish the judges with a general information how the peace has been kept; and such presentments being delivered to the high constables, are by them delivered into court, forming a part of the rolls and other remembrances above-mentioned.

Justices of assize, &c. are to hold their sessions in the chief towns of the county, and their records are to be sent into the Exchequer. 6 *R. II. 9 Ed. III.*

But by 21 G. II. c. 12, the summer assizes in *Buckinghamshire* shall be held at the town of *Buckingham*.

Commis-
sioners in
London.

There is a commission of the peace, *oyer and terminer*, and *gaol delivery* of *Newgate*, held several times in a year for the city of *London* and county of *Middlesex*, at Justice-hall, in the *Old Bailey*, where the lord mayor is the chief judge.

Welsh
Judges.

By the 18 *Eliz. c. 8.* the crown is authorized to appoint two or more justices of assize in the several counties in *Wales*.

But no *Englishman* shall be convicted at the suit of a *Welshman* in *Wales*, but by an *English jury*. 2 *H. IV. c. 19.* 4 *H. IV. c. 26.*

By

BALANCES AND WEIGHTS.

3

By the 19 G. III. c. 74. s. 70. to prevent inconveniences arising from courts of assize, &c. being held in or near cities or towns which are counties of themselves, it is enacted, that, whenever the said courts for any county at large shall be held in or near any city or town which is also a county of itself, with the like or any of the like courts for the said city or town, the lodgings of the judges shall be constructed and taken to be situate both within the county at large, and also within the county of such city or town, for transacting the business of the assizes for such county at large, and for the county of such city or town during the time that such judges shall continue therein for the execution of their several and respective commissions.

Of the temporary residence of the judges.

A prisoner on his arraignment, though under an indictment of the highest crime, must be brought to the bar without irons, or any manner of shackles or bonds, unless there be danger of escape, and then he may be brought with irons. 2. H. H. 219.

Arraignment of the prisoner.

Prisoners, however, are generally tried in their irons, because taking them off is usually attended with great pain and trouble.

By statute 12 G. III. c. 20, it is enacted that persons arraigned for felony or piracy, standing mute, shall be convicted of such felony or piracy; and the court may award judgment and execution, in the same manner as if such person had been convicted by verdict or confession.

Persons arraigned standing mute.

BALANCES AND WEIGHTS.

BY 35 G. III. c. 102. it is enacted, that after the 22d of June, 1795, the justices at every quarter sessions are required to appoint one or more person or persons to examine the weights and balances within their respective counties and divisions; which shall be the high constable, who shall have power to examine within his hundred; or the constable and parish officers of a parish, who shall have the like power within their parish; or such other fit person or persons as they shall think fit, who shall have a power of examining within such district as such justices shall appoint. s. 1.

Sessions to appoint persons to examine weights, &c.

And the persons so appointed (having been first sworn duly and faithfully to execute such office) shall, once a month at least, in the day time, enter into the shop, house, outhouse, or other premises near to such shop, or house,

Which persons are to examine shops, &c. and seize false and weight

Balances and Weights:

Penalty for
having false
weights.

and into the stall or standing-place of every person who shall sell or retail by weight any wares, provisions, goods, or chattels whatsoever, and search for, view, and examine all the weights and balances therein, and seize those that are not according to the standard, or any false or unequal balance there found, and shall break and destroy the same; and the person in whose custody the same shall be found, shall, upon conviction before one justice, upon view, confession, or oath of one witness, forfeit not exceeding 20s. nor less than 5s. as such justice shall think fit, to be levied by distress to be paid to the treasurer of the county where the offence shall be committed, to be by him applied towards the expences of carrying this act into execution, and the residue (if any) in aid of the county rate, *f. 2.*

Obstru-
ing inspec-
tors, or re-
fusing to
produce
weights,
&c.

And if any person shall wilfully obstruct, hinder, resist, or oppose any person hereby authorised to examine such weights and balances, in the execution of his office; or if any such feller or retailer shall refuse to produce his weights and balances, in order to be examined, he shall, on conviction, on oath, before one justice, forfeit not exceeding 40s. nor less than 5s. as such justice shall adjudge, to be levied and applied as aforesaid. *f. 3.*

Recom-
pence to
inspectors.

And such sessions may allow to persons so appointed a reasonable recompence for their trouble, to be paid out of the county rate. *f. 4.*

Offenders
to be pun-
ished one
way only.
Not to ex-
tend to
courts leet
&c.

Provided, that persons punished under this act, shall not be otherwise punished by any other law. *f. 5.*

Provided also, that nothing herein shall extend to lessen the authority of any person, bodies politic or corporate, or persons appointed at any court leet for examining weights and balances within their respective jurisdictions.

f. 7.

The sessions are also to cause proper weights, according to the standard in the Exchequer, to be purchased out of the county rates, for the use of the different counties, which weights are to be deposited either in the hands of the respective clerks of the peace, or of such other person as the justices shall direct; and the same shall be produced at such time and place as any person may by writing require and appoint; the persons requiring such production to pay the reasonable costs of producing the same.

f. 9.

See BUTTER and CHEESE, and WEIGHTS and MEASURES.

BANK

Banks Destroying.

5

BANK BILLS AND NOTES.

BY the 41 *G. III. c. 39.* no person, after June 24, 1801, unless authorised by the Bank of England, shall make or use, or have in his custody any frame or instrument for making paper with curved bar-lines and fums in words appearing in the substance of the paper, or make use, or publish, &c. such paper, or cause the amount of any bank-note, &c. to appear in the substance of the paper whereon the same shall be written or printed; or shall assist in so doing; on pain of being adjudged a felon, and transported for seven years. Restrictions to prevent forgery.

But this act shall not restrain the negotiation of bills of exchange already lawfully issued or re-issued before November 1, 1801, though written on such paper; nor restrain any person issuing bills, &c. with the amount expressed in guineas or pounds sterling in figures appearing in the paper; nor restrain any person from making or using paper, with devices in the nature of water-marks, so as they do not resemble the water-marks, &c. used by the Bank.

Persons knowingly receiving, or having in their possession any forged bank note, or blank bank note, &c. shall, on conviction, be adjudged felons, and be transported for fourteen years. Persons knowingly receiving banknotes.

BANKS DESTROYING, &c.

BY 9 *G. II. c. 22.* if any person shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or break or cut down the bank of any river, or any sea-bank, whereby any lands shall be overflowed and damaged, he shall be guilty of felony without benefit of clergy. Breaking down mounds of fish-ponds.

By 6 *G. II. c. 37.* if any person shall unlawfully and maliciously break down, or cut down the bank of any river, or any sea-bank, whereby any lands shall be overflowed or damaged, he shall be guilty of felony without benefit of clergy. Breaking down banks.

If any person shall unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, driven into the ground, and used for the securing of any marsh or sea walls or banks, to prevent the lands lying within the same from being overflowed and damaged; Piles, &c. for securing banks.

Banks Destroying.

ed; on complaint or information thereof upon oath to a justice, such justice shall summon the party complained of, or issue his warrant to bring such person before him, and upon his appearance, or neglecting to appear, he shall proceed to examine the fact, and upon due proof thereof by confession, or oath of one witness, shall convict the offender, who shall thereupon forfeit 20*l.* half to the informer and half to the poor, to be levied by distress and sale: for want of distress, he shall be committed to the house of correction, and kept there to hard labour for six months. 10 *G. II. c. 32. s. 5.*

Destroying
banks, &c.
on naviga-
ble streams

And the statute 4 *G. III. c. 12. s. 5.* after stating the insufficiency of the laws in force for the preservation of the banks, flood-gates, sluices, &c. belonging to rivers and streams made navigable by act of parliament, enacts, that if any person shall wilfully or maliciously break, throw down, damage, or destroy any banks, flood-gates, sluices, or any other works, or open or draw up any flood-gate, or do any other wilful hurt or mischief to any such navigation, so as to obstruct, hinder, or prevent the carrying on, completing, supporting, or maintaining such navigation, he shall be guilty of felony, and transported for seven years.

How pun-
ishable by
27 *G. II.*

By the temporary statute of *G. II. c. 20.* which was made perpetual by the 27 *G. II. c. 16.* if any person shall, by day or night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy, any lock, sluice, or flood-gate, or other works, on any navigable river, erected or to be erected by authority of parliament, or rescue any person in custody for such offence, he shall be guilty of felony without benefit of clergy; and the offender may be tried in any adjacent county; but the attainder shall not work corruption of blood, loss of dower, or forfeiture of lands or goods. Persons discovering and convicting an accomplice shall be entitled to a pardon. The hundred shall answer damages not exceeding 20*l.* to be recovered as in cases of robbery. *s. 1, 3, 4, 5, 6.*

Wilfully
drawing up
flood-gates.

And any person who shall wilfully and maliciously draw or pluck up any flood-gate, fixed or made in any wear or lock, erected or to be erected by authority of parliament, in or upon any navigable river for preserving the navigation thereof, shall, on conviction upon the oath of one witness before two justices, be sent to the house of correction to hard labour for one month. *s. 2.*

By

Banks Destroying.

7

By the 19 G. II. c. 22. If there shall be cast out of any vessel, being within a haven, road, channel, or navigable river, any ballast or rubbish, but *only on the land* where the tide never comes, any one justice may summon the master of such vessel, or any other person acting as such, against whom the information shall be made, or issue his warrant to bring him before him, and upon due proof made by confession, or on view of such justice, or oath of one witness, that any ballast or rubbish hath been cast out, the master or person acting as such, shall be adjudged the offender, and shall forfeit not exceeding 5*l*. nor under 50*s*. half to the informer, and half to the poor; to be levied by distress of the goods of the person so convicted, or of the ship or tackle; and the same, if not redeemed in five days, to be sold, rendering the overplus, if any be, after demand in writing, charges of distress and sale being first deducted. For want of sufficient distress, the offender to be committed to gaol or to the house of correction for two months, or till payment of the penalties, or so much thereof for which the commitment shall be.

Filling up
havens
with ballast

And be it further enacted by the same statute, that as soon as any vessel shall be sunk, stranded, or run ashore, in any harbour, channel, or navigable river, or be brought in, or be there in a shattered condition, and permitted to remain there, and the owner or master shall begin to take down or carry away any of the rigging or tackle, or if there shall not be any person to take care of such vessel, any one justice shall, on information thereof, summon the owner or other person having or pretending to have the command thereof, or issue his warrant to bring him before him, and on conviction shall issue his warrant for seizing and removing such vessel, and the rigging and tackle thereof, in such manner as he shall order and direct; and if such person shall not within five days give satisfactory security to the justice, to clear the harbour of such vessel, and of all wreck and parts thereof, and pay the charges of seizing, removing, and disposing of the vessel and furniture, then the justice shall cause the hulk and tackle to be sold, and with the money pay the charges of clearing the place where the vessel shall lie, and of seizing, removing, and selling the same, rendering the overplus to the owner of the manor where the same shall happen.

In the case of *Brucklsbank and Smith*, M. 34 G. II. on a special verdict from *Northumberland* assizes, it was stated, that the defendant was a justice of the peace, and

Ballast or
rubbish to
be thrown
on the land
the

Berwick upon Tweed.

the plaintiff master of a ship floating in the *Tyne*, a navigable river; that upwards of three tuns of ballast were unloaded out of the said ship into a machine or vessel called a hopper, and carried into the high and open sea, where it was cast into the sea in fourteen fathom water, at a distance from any port, haven, channel, or navigable river: whereupon Mr. *Smith* convicted the plaintiff as an offender against this act. The plaintiff brought his action, and it was urged on his behalf, that this was no offence against the meaning of the act. But by Lord *Mansfield*. Ch. J. This is a general question, which goes farther than this particular case; but it is a very plain and clear case, and expressly against the prohibition of the act, which provides, that it shall not be thrown *but upon the land*: whereas this man says, that he has found a better way than that which the act has expressly prescribed; but there is such an opening to fraud in this way, that it would be dangerous to trust to this method, though it were not prohibited. However, it is enough that it is contrary to the direct and express provision of the act. Judgment was given by the court, unanimously, for the defendant. *Burr. Mansf.* 656.

BERWICK UPON TWEED.

The town of Berwick upon Tweed is part of the realm of England, though separately mentioned.

THE town of *Berwick* was originally part of Scotland, and, as such, was for a time reduced by king Edward the first into the possession of the crown of *England*, and during such its subjection, it received from that prince a charter which (after its subsequent cession by *Edward Baliol* to be for ever united to the crown and realm of England) was confirmed by king *Edward* the third, with some additions; particularly that it should be governed by the laws and usages which it enjoyed during the time of king *Alexander*, that is, before its reduction by *Edward* the first. Its constitution was afterwards new modelled, and put upon an *English* footing by a charter of king James the First; and all its liberties, franchises, and customs, were confirmed in Parliament by the stat. 2 *Jac.* c. 28. Though it hath therefore some local peculiarities, derived from the ancient laws of *Scotland*, yet it is clearly part of *England*; being represented by burgesses in the House of Commons, and bound by all acts of the *British* Parliament, whether specially named or otherwise. The stat. 20 *G. II.* c. 42. declares, that where *England* only

Bridges.

9.

only is mentioned in any act of Parliament, the same, notwithstanding, hath been, and shall be deemed to comprehend the dominion of *Wales*, and Town of *Berwick upon Tweed*. And though certain of the king's writs or processses of the courts of Westminster, do not usually run into *Berwick*, any more than the principality of *Wales*, yet it hath been solemnly adjudged, that all prerogative writs (such as those of *mandamus*, *prohibition*, *habeas corpus*, *certiorari*, &c.) may issue to *Berwick* as well as to every other of the dominions of the crown of *England*; and that indictments, and other local matters arising in the town of *Berwick*, may be tried by a jury of the county of *Northumberland*. *Cro. Jac.* 543. 1 *Roll. Abr.* 292. Stat. 11. G. c. 4. 20 G. II. c. 42. 4 *Burr.* 834. 1 *Black.* 99.

BRIDGES.

NO town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed. 9 *H. III. c. 1.*

The justices, or four of them at the least, (1 2.) Justices to enquire about bridges. shall have power to enquire, hear, and determine, in the general sessions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment, against such as ought to be charged to make or amend them, as the king's bench usually doth, or as it shall seem by their discretion to be necessary and convenient, for the speedy amendment of such bridges. 22 *H. VIII. c. 5.*

Decays of bridges are presentable in the leet or torn. 2 *Inst.* 701.

And an indictment for not repairing a bridge, should shew what sort of bridge it is, whether for carts and carriages, or for horses, or for footmen only. *L. Raym.* 1175.

No money shall be applied to the repair of bridges, until presentment be made by the grand jury at the assizes or sessions, of their insufficiency, inconveniency, or want of reparation. 12 *G. II. c. 29.*

The charges of repairing and amending bridges, and highways at the ends of bridges, shall be paid out of the general county rate. *Id.*

The four justices, in sessions as aforesaid, may appoint
C two

Bridges.

two surveyors, with salaries, to see the bridges amended.
22 *H. VIII. c. 5.*

This business of surveying the bridges, is usually annexed by the justice, to the office of the high constables, for which they have power, by this clause, to allow them salaries. 1. *Burn. 282.*

The justices may purchase lands.

The justices, at their sessions, may purchase any parcel of land, adjoining or near to any county bridge, for the more commodious enlarging, or rebuilding the same, not exceeding one acre, to be paid for by the treasurer, out of the county rates. 14 *G. II. c. 33.*

The justices, at their general or quarter sessions, after presentment made by the grand jury of their want of reparation, may contract with any person for rebuilding, repairing, and amending the same, for any term not exceeding seven years, at a certain annual sum. 12 *G. II. c. 29.*

A public bridge built by an individual to be repaired by the county

A public bridge, built by an individual, &c. shall be repaired by the county; as in the case of *K. and the Inhabitants of the West Riding in the county of York, E. 10. G. III.* The inhabitants of *Glusburne*, being desirous of having a bridge for carts and carriages over *Glusburne Beck*, applied for assistance to the sessions for the said West Riding; and thereupon the justices ordered the sum of 10*l.* to be issued for that purpose, with a proviso that the same should not be construed to extend to charge the inhabitants of the said Riding, in future, with the reparation of the said bridge, or any part thereof. Accordingly, such bridge was built for public utility, and was afterwards constantly used by all persons passing that road, till 1767, when it was carried away by a flood. And the question was, Whether the inhabitants of the West Riding were obliged to rebuild the said bridge? The court were clear and unanimous, that the Riding was obliged to repair this new bridge. The inhabitants of the county are of common right bound to repair all public bridges, because they are for the benefit of the county. The inhabitants of *Glusburne* were not bound to make or build this new bridge for carts or carriages. This bridge was for the common utility of the county, and therefore is within the rule, that "If a man makes a bridge for the common good of the king's subjects, he is not bound to repair it." The common law therefore attached upon this bridge, and the county ought to repair it. *Blackf. Rep. 685.*

It seems clear that those who are bound to repair such bridges, must make them of such height and strength as shall be answerable for the course of the water, whether it continue in the old channel, or make a new one, and that they are not punishable as trespassers for entering on any adjoining land for such purpose, or for laying on the materials necessary for such repairs. 1 *Haw.* 222.

In the case of the *K. v. The inhabitants of the county of Cumberland*, H. T. 35 G. III. a question was discussed respecting the liability of the inhabitants of a county to widen a bridge, which is not of sufficient width to answer the exigencies of the public. Inhabitants are obliged to widen bridges if necessary. THE COURT (though no positive opinion was given) strongly intimated, that if a bridge used for carriages, though formerly adequate for the purposes intended, becomes not of sufficient width to meet the public exigencies, owing to the increased width of carriages, the burden of widening it must be borne by those who are bound to repair the bridge; and upon that question, lord *Kenyon* Ch. J. said there could not be entertained much doubt. 6 *Durnf. & East*, 194.

The King v. The inhabitants of the West Riding of Yorkshire. Easter T. 42 G. III. In this case it was determined, that the county or riding is liable to the repair of a bridge built by trustees under a turnpike act; there being no special provision for exonerating them from the common law liability, or transferring it to others; though the trustees were enabled to raise tolls for the support of the roads. If a bridge be of public utility, and used by the public, the public must repair it, though built by an individual: *aliter*, if built by him for his own benefit, and so continued, without public utility, though used by the public. A bridge built in a public way, without public utility, is indictable as a nuisance; and so it is if built colourably, in an imperfect or inconvenient manner, with a view to throw the *onus* of rebuilding or repairing it immediately on the county. 2 *East's Rep.* 342. The county is obliged to repair a bridge built by trustees under a turnpike act.

By the common law, declared and defined by the stat. 22 *Hen. VIII.* c. 5. and subsequent acts, where the inhabitants of a county are liable to the repair of a public bridge, they are liable also to repair to the extent of three hundred feet of the highway at each end of the bridge: and if indicted for the non-repair thereof, they can only exonerate themselves by pleading specially, that some other is bound by prescription or tenure to repair the same. *King v. the Inhabitants of the West Riding of York.* 7 *East's Rep.* 588. Inhabitants liable to repair public bridges. By

Burning:

convicted at Newgate sessions, for that he, being possessed of a House in *London* for six years, remainder to another for three years, reversion to the corporation of haberdashers in fee, did burn the said house. The indictment was removed into the King's Bench by *certiorari*, where it was held by three justices, against the opinion of *Croke*, justice, that it was not felony to burn a house of which he was in possession by virtue of a lease for years. They said the burning of a house is not felony, unless it be the house of *another*. He was therefore discharged of the felony; but, because it was an enormous offence, he was fined 500*l.* and imprisoned during the king's pleasure: he was also sentenced to stand upon the pillory with a paper on his head specifying the offence, at *Westminster* and at *Cheapside*, upon the market-day, and in the place where he committed the offence, and to find security for his good behaviour during life. *Cro. Car.* 376.

Mr. Justice Foster makes the following remark on the above case: "The judgment in *Holmes's* case, to say no more of it, was a very merciful judgment." *Fost.* 349.

Breeme's
Case.

Having mentioned the case of *K. v. Breeme*, we shall, for the satisfaction of our readers, give it more at large.—At the Old Bailey, in April Sessions, 1780, *Andrew Breeme* was indicted before Mr. Baron *Eyre*, for that he about the hour of twelve in the night, a certain house feloniously, wilfully, and maliciously did set on fire and burn. The indictment consisted of six counts, charging the offence to have been committed; *first*, against the common law; and *secondly*, against the stat. 9 G. c. 22. and laying it to be in the house, *FIRST*, of *William Bolton*; *SECONDLY*, of *Stone Tuppen*; *THIRDLY*, of *Andrew Breeme*. The jury found the prisoner guilty, but the judgment was respited, and the question, Whether the conviction was legal, referred to the *TWELVE JUDGES* upon the following facts: That the prisoner wilfully and maliciously set on fire and burned the house mentioned in the indictment; that he was tenant in possession of the house, under a written agreement for a lease for three years from *Stone Tuppen*: that *Stone Tuppen* had built the house under a lease from *William Bolton* for ninety-nine years; and, that *William Bolton* was tenant in fee simple of the land on which the house was built. On the first day of Trinity term, nine of the judges [*viz.* L. C. B. *Skymer*, Mr. J. *Gould*, Mr. J. *Willes*, Mr. J. *Asbburgh*, Mr. J. *Nares*, Mr. J. *Buller*, Mr. Baron *Eyre*, Mr.

Mr. Baron *Hotham*, and Mr. Baron *Perry*] assembled at Lord Chief Baron Skynner's chambers, and they were unanimously of opinion that the prisoner, under the circumstances of the present case, was not guilty of *Arson*. The law upon this subject, they said, had been too long and too firmly established, by *Holmes's* case, to be now departed from. Some of the judges, however, seemed to doubt the propriety of that determination, and said, that if the question had been unsettled, they should have been of a different opinion; but the majority of the judges held, that the determination of *Holmes's* case was right, for that the principle of it was the protection of the person in the actual and immediate possession of the house. As to the stat. 9 G. c. 22. they held, that it did not vary the nature of the offence as it stood at common law, that act being merely intended to clear the doubts which had arisen from the reasoning in *Poulter's* case as to the exclusion of the principal offender from the benefit of clergy; and in this view they said it is considered in *Blackstone's Commentaries*. *Leach's Cr. Law*, 195. *Case* 103.

Where a person burns the house of another, if it is not wilful and malicious, it is no felony, but only a trespass; therefore if a man shoots unlawfully with a gun at the cattle or poultry of another, and by means thereof sets another's house on fire, this is not arson: for though he was doing an unlawful act, he had no intent to burn the house. 1 H. 569.

Whoever shall wilfully and of malice burn, or cause to be burned, or aid, procure, or consent to the burning of any barn, or stack of corn or grain, within any of the counties of Cumberland, Northumberland, Westmoreland and Duresme, shall be guilty of felony without benefit of clergy. And justices of the peace in sessions may hear and determine the same. If any person shall in the night time, maliciously and willingly burn, or cause to be burned any ricks, or stacks of corn, hay, or grain, barns, or other houses, &c. he shall be guilty of felony, but without corruption of blood, or disinheritation of heirs; and the judges of assize, or three justices of the peace (1 2.) may determine the same, so that the prosecution be within six months: and the said justices, on request of the party injured, shall issue their warrant for apprehending all such persons as shall be suspected thereof, and take their examination: and shall cause all others who to them shall seem likely to make discovery, to appear before them and

Burning
the house
of another,
if not wil-
fully, is no
felony.

Burning of
barns,
grain, hay,
&c.

Burning:

and give information on oath; and if such witness, being duly summoned, shall refuse to appear, or to be examined, they may commit him to the common gaol, till he submit to be examined upon oath; and they shall issue warrants for summoning jurors; and any person found guilty shall be transported for seven years. 43 Eliz. c. 13.

Such as are taken for house burning feloniously done, are not bailable by justices of the peace. 3 Ed. I. c. 15.

And by the 9 G. c. 22. (commonly called the Black Act) If any person shall set fire to any house, barn, or out-house; or to any hovel, cock, mow, or stack of corn, straw, hay, or wood, &c. he shall be guilty of felony, without benefit of clergy.

Burning
a Mill-
house.

The burning of a *Mill-house*, not parcel of any dwelling-house, is not felony within the stat. of 9 G. I. c. 22. which gives a remedy to the party grieved against the hundred, though within the stat. 9 G. III. which omits the remedial clause. *Hiles v. the inhabitants of the Hundred of Sbrewsbury*. E. 43. G. III.—3 *East's Rep.* 457.

Damage
sustained
by wilfully
burning a
person's
barn.

In an action against the hundred on the stat. 9 G. I. c. 22. for damage sustained by the wilful burning of the party's barn, it is a precedent condition that the party grieved should within the time limited, give in his examination upon oath before a magistrate, whether or not he knew the offender or offenders, or any of them: and an examination on oath, in which the party only swore that he suspected that the fact was done by some person or persons to him unknown, is not sufficient within the statute; still less in support of an averment in the declaration, that he gave in such examination, &c. in and by which it appeared that the plaintiff did not know the person or persons who committed the fact. For non constat by the terms of such examination, that the plaintiff did not know some of the offenders if there were several. *Thurtell v. the inhabitants of the Hundred of Mutford and Lothingland in the County of Suffolk*. Hill. 43 G III.—3 *East's Rep.* 400.

Burning
wood or
coppice.

If any person shall, by day or by night, in a riotous, open and tumultuous, or in a secret and clandestine manner, forcibly, or wrongfully and maliciously, burn any wood, or sprigs of wood, or coppice wood, he shall be guilty of felony. 1 G. 2. c. 48.

And any two justices, or the justices in sessions, may cause the offender to be apprehended, and hear, and determine and adjudge the offence, 6 G. c. 16.

By

By the 9 *G. III. c. 29.* Any person who shall burn or set fire to any wind saw-mill, or other wind or water-mill, or any of the works thereto belonging, shall be guilty of felony without benefit of clergy. Also any person who shall burn or set fire to any machine or engine belonging to any mine, shall be guilty of felony, and transported for seven years.

Burning
saw-mills,
or other
mills

If any person shall set fire to, burn, or destroy any goss, furze, or fern, in any forest or chase, without consent of the owner or person chiefly entrusted with the custody of such forest or chase, and being brought before a justice, shall be thereof convicted by confession, or oath of one witness, he shall forfeit not exceeding 5*l.* nor less than 40*s.* half to the informer, and half to the poor; if not forthwith paid, to be levied by distress: and if no sufficient distress can be found, the justice shall commit him to the common gaol for any time not exceeding three months, nor less than one month. 28 *G. II. c. 19.*

Burning
goss, furze,
&c.

And for the preservation of black game and grouse, it is enacted by 4 and 5 *W. & M. c. 29. f. 11.* that no person shall, between February 2, and June 24, burn any grig, ling, heath, furze, goss, or fern, on any mountains, hills, heaths, moors, forests, chaces, or other wastes, upon pain that the offender shall be committed to the house of correction for any time not exceeding one month, nor less than ten days, there to be whipped, and kept to hard labour.

If any person shall burn or cause to be burnt, any wain or cart, laden with coals, or any merchandize, or any heap of wood prepared, for making coals, or billets, he shall forfeit treble damages to the party grieved, to be recovered by action of trespass: and also 10*l.* as a fine to the king. 37 *H. VIII. c. 6.*

Burning
carts, wains,
&c.

By 10 *G. II. c. 32.* to set fire to a coal-mine is felony without clergy. And by 4 & 5 *W. & M. c. 23.* to burn the covert for red and black game, incurs one month's imprisonment. Also by 28 *G. II. c. 19.* to burn the covert for deer or game, incurs a penalty from 40*s.* to 5*l.* inclusive.

Burning
coal-mines,
covert for
game, &c.

If any person, through negligence or carelessness, shall fire or cause to be fired any dwelling-house or out-house or houses, and be thereof convicted on the oath of one witness before two justices, he shall forfeit 100*l.* to the church-wardens of the parish where the fire shall happen, to be distributed by them to the sufferers, in such proportions

Negligently setting
fire to a
house.

Butter and Cheese:

tions as to them shall seem just; and if he do not pay the same immediately on demand to the church-wardens, the said justices shall commit him to some workhouse, or house of correction, for 18 months, there to be kept to hard labour. 6 *An. c. 31.*

Any justice may cause to come before him, all those, who to any of the people, concerning the firing of their houses, have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and, if they shall refuse to find such security, may cause them to be safely kept in the king's prisons, until they shall find such security.

Threatening to burn

If any person shall send any letter, without any name subscribed thereto, or signed with a fictitious name, threatening to burn any house, out-house, barn, stack of corn or grain, hay or straw, he shall be guilty of felony without benefit of clergy. 9 *G. c. 22.*

BUTTER AND CHEESE.

Weight of the cask to be marked.

BY the 13 and 14 *C. II. c. 26. s. 5, 6.* Every farmer and other person packing up butter for sale, shall pack it into good and sufficient casks, made of sound, dry, and well-seasoned timber, and shall set upon every firkin and cask, when the same is thoroughly and fully seasoned in water, a continuing visible mark of the just weight of the empty cask, on pain of forfeiting for every offence 10s. for every hundred weight of butter otherwise packed, and in proportion for a greater or less quantity; half to the poor, and half, with double costs, to him who shall sue for the same in sessions within four months, by action of debt, indictment, information, or presentment.

on the pot.

And every potter shall set on every pot, which he shall make and sell for packing up butter, the just weight of the pot when it is burnt, with the first letter of his Christian name, and his surname at length, on pain of 1s. and no person shall expose to sale any butter packed up in a pot not marked, on pain of 2s. for every such pot, to be recovered and applied in the same manner. *Id.*

Weight & quality.

By the same statute, *s. 2.* Every kilderkin of butter shall contain 112 pounds, and every firkin 56 pounds neat, or above; every pound containing 16 ounces, besides the tare of the cask, of good and merchantable butter.

No old or corrupt butter shall be mixed or packed with butter which is new and sound; nor any whey butter mixed with that which shall be made of cream; but every cask or pot of butter shall be of one sort and goodness. No butter shall be salted with any great salt, but shall be salted and saved with small salt: nor shall any more salt be intermixed with it, than shall be needful for its preservation, on pain that every owner, farmer, or packer of butter, not putting up in each kilderkin, firkin, and pot, to be sold or exposed to sale, such quantities as aforesaid, or offending in false packing as aforesaid, shall, for every offence, forfeit the value of the butter so falsely packed, and for every offence, where any kilderkin, firkin, or pot, shall contain a lesser quantity of butter than as above, six times the value of every pound of butter that shall be wanted in such pot.

Not to be improperly mixed.

When the farmer, or other person, shall have filled the cask with butter, he shall, besides the mark of the weight of the cask, set also on the cask the first letter of his Christian name, and his surname at length, with an iron brand; on pain of forfeiting, for every offence 10s. for every hundred weight of butter otherwise packed, and in the same proportion for more or less. To be recovered and applied as aforesaid. *f. 5.*

Owner to brand his name on the cask.

Every cheesemonger or other, selling any kilderkin, firkin, pot, or cask of butter, shall deliver therein the full quantity, and proper quality, or make satisfaction according to the price. *f. 3.*

Quantity and quality

And any cheesemonger, or other person, who shall re-pack for sale any butter, in any kilderkin, firkin, or other cask, or pot, shall forfeit double the value thereof. *f. 4.*

Penalty for re-packing.

But prosecution shall be commenced within four months after the sale of the butter. *f. 7.*

Provided that no seller of butter shall be charged with any of the said penalties, after a person has bought the butter and approved of it. *4 W. c. 7. f. 2.*

By the *4 W. c. 7. f. 3.* To prevent any fraud in the seller, after the factor or buyer has bought the butter, such factor or buyer shall set his seal, mark, or name upon it, or upon the cask; and, if it shall afterwards be exchanged or opened, and the cask changed, or bad butter mixed with good, or any other fraud be committed by the seller, he shall, on conviction before one justice, by confession, on the oath of one witness, forfeit 20s. for every firkin and offence, to be levied by the constable by distress, and distributed

Fraud by the seller after sale.

Vessels to be branded with the name of the maker and the weight, on penalty of 10s.

And every cooper, or other person making a vessel for packing such Butter as aforesaid, before suffering it to go out of his possession, shall, on the bottom of such vessel, on the outside, with an iron, brand his Christian and surname at length, in permanent and legible letters, to denote that it is the mark of the cooper or maker of the vessel, together with the exact weight and tare thereof, or in default thereof, for every such offence shall forfeit the sum of ten shillings. / 2.

Directions for packing Butter.

Every dairy-man, farmer, or seller of Butter, or other person who shall pack it for sale, shall pack it in vessels made and marked as aforesaid, and no other, and shall properly soak and season every vessel wherein he shall pack any Butter, before the packing thereof; and when such vessel shall have been so soaked and seasoned, shall on the bottom, on the inside, and on the top, on the outside, with an iron, brand his Christian and surname at length, in permanent and legible letters; and shall also, with an iron, brand on the top, on the outside, on the bouge or body of every such vessel, the true weight or tare of such empty vessel, when it shall have been soaked and seasoned; and shall also, with an iron, brand his Christian and surname at length, on the bouge or body of every such vessel, across two different staves at least, to prevent such staves from being taken out and changed; and also shall distinctly, and at length, imprint his Christian and surname upon the top of the Butter contained in every such vessel when so filled; upon pain that every dairy-man, farmer, or seller of butter, or other person offending in packing Butter for sale, in any vessel not made and marked by the cooper or maker thereof, or not soaked and seasoned as aforesaid, or in not branding the weight of such vessel, after it shall be so soaked and seasoned, or in not branding his Christian and surname on every such vessel, or in not imprinting his Christian and surname on the Butter packed therein, shall for every such offence forfeit five pounds.

Penalty of 5l. for not conforming

/ 3.

Quantities to be packed in each vessel.

Every dairy-man, farmer, or seller of Butter, or other person who shall pack Butter for sale, shall pack in every tub, firkin, and half firkin, (exclusive of the tare of the cask or vessel,) the several and respective quantities of good and merchantable Butter herein-after mentioned; (that is to say), in every tub 84 pounds avoirdupoise weight net, and not less, (besides the tare of the cask) of good and merchantable Butter; in every firkin fifty-six pounds,

any half
and no
packed up Butter not
with any to be mix-
ed,
any But-
cream,
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person, Penalty of
5l. for re-
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Butter.
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will extend Foreign
Butter may
in certain
cases be re-
packed in
vessels used
for British
Butter.

Butter and Cheese.

taken thereout, for the re-packing for sale of any foreign Butter, as do and shall, before he so re-pack such foreign Butter, entirely cut out and efface the several names of the original dairy-man, farmer, or seller of Butter, from every such vessel, leaving the name and tare of the cooper, and the tare of the original dairy-man, farmer, or seller of Butter thereon; and after the names are so effaced, do and shall, with an iron, brand his Christian and surname, and the words "Foreign Butter" upon the bouge or body of every such vessel, across two staves at least, to denote that such Butter is foreign Butter. / 8.

Penalty of
40l. for
counterfeit-
ing.

It is further enacted, that if any person shall be hereafter convicted of counterfeiting or forging any of the names or marks of any such owners, farmers, or dairy-men, or of causing the same, or any of them, or any part thereof, to be counterfeited or forged, the person so offending shall for every such offence forfeit forty pounds. / 9.

Recovery
and appli-
cation of
penalties
not exceed-
ing 5l.

All and every offence committed against this act, the mode of determining which is not herein-before prescribed, and where the penalty shall not exceed five pounds, shall be enquired of, sued for, heard, and determined before one justice; and upon proof thereof, by one witness upon oath, the penalties and forfeitures thereby incurred shall or may be levied by distress and sale, by warrant under the hand and seal of such justice, the overplus being to be rendered to such offender; and such penalties and forfeitures shall be to the use of the informer; and for want of sufficient distress, it shall be lawful for such justice, by warrant under his hand and seal, to cause such offender to be committed to the common gaol or house of correction, there to remain without bail or mainprize, for not exceeding three calendar months, nor less than twenty-eight days, unless such penalties and forfeitures, and all reasonable charges shall be sooner paid. / 10.

Conviction
to be trans-
mitted to
the quarter
sessions,
who may
determine
appeals.

And the justice before whom conviction shall be had, shall cause the same to be fairly written upon parchment, and transmitted to the next general or quarter session to be filed and kept amongst the records; and if any person so convicted shall appeal to the general or quarter session, the justices in such session are hereby required, upon receiving the said conviction, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act; any law, custom, or usage, to the contrary notwithstanding. / 11.

Provided

Provided always, that if any person shall think himself aggrieved by any determination of any justice, it shall be lawful for such person to appeal to the next general or general quarter session, and the justices assembled, presiding at such session, are hereby empowered to award such costs to either party, as to them shall seem meet. *f. 12.*

Appeal may be made to the quarter sessions.

Provided also, that no such conviction shall be set aside for want of form, if the material facts alledged in such conviction or judgment, and on which the same shall be grounded, be proved to the satisfaction of the said court; nor shall any such conviction or judgment be removed or removeable by *certiorari*, into any of his majesty's courts of record at *Westminster*. *f. 13.*

Convictions not to be set aside for want of form.

And all such fines, penalties, and forfeitures, imposed by this act, as amount to more than five pounds, shall be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*; and every such fine, penalty, or forfeiture, last mentioned, shall be to the use of him who shall inform or sue for the same, with costs of suit. *f. 14.*

Application of penalties exceeding 5l.

If any person shall at any time be sued for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence; and if afterwards a verdict shall pass for the defendant, or the plaintiff shall become non-suited, or discontinue his action or prosecution, or judgment shall be given against him, upon demurrer or otherwise, then such defendant shall have double costs against such plaintiff. *f. 15.*

General issue may be pleaded.

But nothing in this act shall extend to the packing of Butter in any pot or vessel which shall not be capable of containing more than fourteen pounds. *f. 16.*

Vessels not more than 14lb.

Every information, prosecution, or suit, for any offence against this act, shall be commenced within four months after the offence committed. *f. 17.*

Limitations of actions.

And whereas an act was made in the ninth year of G. I. intituled, *An Act for the better preventing Abuses committed in the Weighing and Packing of Butter in the City of York*, And another in the 17 G. II. intituled, *An Act to prevent the committing of Abuses in the Weighing and Packing of Butter in the Town and Borough of New Malton, in the County of York*: And whereas another act was made in the 30 G. III. for establishing a market at *Milford*, intituled, *An Act to enable Sir William Hamilton to make*

Certain acts recited;

Butter and Cheese.

and so
much
thereof as
refers to the
recited act
of 13 and 14
Car. II. or
as mentions
pots of But-
ter, repealed

and provide Quays, Docks, Piers, and other Erections, and to establish a Market, with proper Roads and Avenues thereto respectively, within the Manor of Hubberston and Pill, in the County of Pembroke: And whereas all the said Three several Acts contain a Clause referring to the said Act of the 13 and 14 C. II. and to the penalties in the same Act; be it further enacted, That so much of the said Act of the 9 G. I. and of the said Act of the 17 G. II. and of the said Act of the 30 G. III. respectively, as severally refers to the said Act of C. II. and also so much of the same Three several Acts respectively as mentions Pots of Butter, shall be, and are hereby repealed; but the same Three several Acts respectively, in other respects, shall be and remain as if this Act had not been made. *f. 18.*

Act to
commence
July 1,
1796, and
act 13 & 14
Car. II. and
part of 4
William &
Mary, to be
repealed.

This act shall commence and be in force on the first of July, 1796; and immediately after the commencement of the said statute of 13 and 14 C. II. and also so much of the said statute of 4 W. & M. as discharges any person from the effect of any part of the said act of 13 and 14 C. II. expressed to be for preventing any fraud in the seller of Butter, after the factor or buyer hath contracted for the same, shall be, and the same are and is hereby repealed. *f. 19.*

Not to ex-
tend to
Scotland.
A custom
that every
pound of
butter sold
in a partic-
ular mar-
ket town
shall weigh
eighteen
ounces is
bad.

Nothing contained in this act shall extend to that part of Great Britain called Scotland. *f. 20.*

Custom will not establish what expressly militates against several statutes. As in the following case: *E. 29 G. III. Noble against Durell and others.* This was an action of trespass for taking the plaintiff's butter: the defendants in their plea, after stating that Southampton was a corporation by prescription, and that they annually held a court-leet, or view of frankpledge, at which a jury is sworn and continues in office till the next court, justified, as some of the jury, taking the butter under the following custom, "That every pound of butter exposed to sale in the said markets of the said town, within the town, should be and ought to be of the weight of eighteen ounces;" alledging that the butter in question weighed more than sixteen, but less than eighteen ounces in the pound. To this plea there was a general demurrer and joinder. *Gibbs*, in support of the demurrer, insisted that the custom could not be supported, because it was against the law of the land. *Burrough*, on the other side, contended, that the object of weights and measures is, that

that there shall be one certain and known weight; and it is as convenient to the inhabitants of a particular town to have a pound to consist of eighteen as of sixteen ounces. This is a customary weight, and not originally introduced by statute. Lord *Kenyon*, C. J. In deciding this question, I wish not to be understood to say that a custom may not prevail that butter shall be sold in lumps, or yards, containing any given number of ounces; but the question now before the court is, whether a custom in *Southampton* that a pound shall contain eighteen ounces, can be supported in law. To say that it can, would be to violate all the rules of language, as long as the acts of parliament are to regulate this subject. This has engaged the attention of the legislature for five centuries, and they have thought it of the utmost importance that there should be one standard of weights and measures throughout the kingdom. But it is said, that there is no objection on the score of reason and convenience why this rule should not be relaxed in a particular town; because, when the exception is once established, the inhabitants of that town will square their notions accordingly. But it is material to consider whether the exception to the rule will be confined to butter only: if this custom can be established, it also may be extended to hops in *Kent*, or to any other commodity in any other part of the kingdom; and thus the greatest confusion will be introduced on a subject that ought to be particularly plain; so one measure might prevail at *Poole*, and another at *Dartmouth*, &c. and thus foreign merchants would never know on what terms they were treating. It might be as well contended that a custom could prevail in a particular place, that a less number of days than seven should constitute a week; or that a less space of ground than an acre should be called an acre. It was objected, that, even supposing that the statute of *H. VII.* applied universally, that the old customs should prevail till the weights and measures were sent down from the Exchequer, which was directed to be done by that act; and that the plaintiff should have replied that in point of fact they were sent to *Southampton*. But the legislature did not say that, till that was done, the old custom should prevail: and we cannot suppose that that, which the legislature directed, was not done. The statute of 13 and 14 *Car. II. c. 26.* takes it for granted that a pound shall consist of 16 ounces, and that the weights and measures had been sent to the different parts

Cabbages.

of the kingdom. There are two kinds of weights; one containing 12 ounces of a certain denomination, the other of 16 ounces of another denomination; and it appears that butter has always been sold by the latter. Then it was said, that customs may prevail against common law; but they are such *consuetudines* as are reasonable and beneficial: but this is the reverse of both; for all mankind have concurred in agreeing, that for their mutual convenience they should be regulated by one uniform standard, *Asbursf, J.* The only ground on which this custom can be supported, is a supposition that the legislature did not intend to interfere with the customs of any particular place: but that is totally unfounded; for the legislature supposed that, at the times when the several acts passed, different weights and measures prevailed in different towns; to remedy which inconvenience they passed those acts: and in none of them is there any reservation of any ancient customs; but they are applicable to every place, directing that, in future, there shall be but one weight and measure throughout the kingdom: *Buller, J.* This case does not interfere with the question alluded to in the argument, whether a custom to sell butter in lumps, of any particular weight, is good or not. That question will remain, notwithstanding this decision, as it did before; and I have never seen any thing in the acts of parliament requiring persons not to sell more or less than a pound; but the question here is, whether, when a person is selling butter under the specific denomination of a *pound*, he shall be *compellable* to sell more than a pound. Butter is directed to be sold by avoirdupois weight, where a pound consists of sixteen ounces. Then how can a person who professes to sell a *pound of butter*, be *compellable* to sell *more than a pound*? I am of opinion that the custom cannot be supported. *Grose, J.* of the same opinion. Judgment for the plaintiff. *Durnf. & East, 271.* See *Title WEIGHTS AND MEASURES.* Also *Title BALANCES AND WEIGHTS.*

CABBAGES.

Stealing
cabbages,
parsnips,
peas, or
carrots.

BY the 13 G. III. c. 39. Any person who shall steal, and take away, or maliciously pull up and destroy any turnips, potatoes, *cabbages*, parsnips, peas, or carrots, growing or being in any garden, lands, or grounds, shall, on conviction before one justice, by confession, or oath of one

Carriers.

22

one witness, forfeit, over and above the value of the goods stolen, a sum not exceeding 10*s*. as to such justice shall seem meet, first making the owner satisfaction for the damage. Such forfeiture to be distributed between the owner of the goods, and the overseers for the use of the poor, as the justice shall think fit; or he may, at his discretion, assign the whole either to the owner or overseer. In default of payment, the justice shall commit the offender to the house of correction, there to be kept to hard labour not exceeding one month, unless the penalty shall be sooner paid.

And in all informations, and other proceedings on any of the said offences, the evidence of the owner, and of the inhabitants of the parish or place, shall be allowed; provided however, that where the conviction shall be on the evidence of the owner, the whole of the penalty shall be paid to the overseer for the use of the poor.

And by an act of 42 G. III. to extend the provisions of the above recited act, it is enacted, that any person who shall steal, take away, wilfully or maliciously pull up, injure; or destroy any turnips, potatoes, cabbages, parsnips, beans, peas, or carrots, growing or being in any garden, orchard, lands, or grounds, open or inclosed, and convicted in the manner directed by the above act of 13 G. III. he shall on conviction or confession, or oath of one witness, before one justice, forfeit such sum as the justice shall think fit, not exceeding twenty shillings besides the value of the goods.

Further punishment by a subsequent act.

CARRIERS.

ALL those are denominated common carriers, who carry goods for hire: as masters and owners of ships, lightermen, stage-coachmen, and the like; and they are chargeable, on the general custom of the realm, for their faults or miscarriages. 1 Bac. Abr. 343.

By the 3 W. c. 12. s. 24. the justices, in Easter sessions yearly, shall rate the prices of all land-carriage of goods, to be brought into any place within their jurisdiction, by any common waggoner or carrier; and shall certify the rates so made to the mayors, and other chief officers of the several market towns within their jurisdiction, to be hung up in some public place to which all persons may resort; and no such common waggoner, or carrier, shall take for carriage above the rates so set, on pain of 5*l*. by distress,

Ascertaining the rates for carriages

distress, by warrant of two justices where such waggoner or carrier shall reside, to the use of the party grieved.

No more shall be paid for carrying goods to London than from it.

And by the 21 G. II. c. 28. If any waggoner or carrier shall demand and take any greater price for bringing goods to *London*, or to any place within the bills of mortality, than is allowed and settled by the justices for the place from whence the same was brought, for the carrying of goods from *London* to the said place, he shall forfeit 5*l.* to the party grieved, to be recovered as by the said act of the 3 W. c. 12. or by distress and sale of his goods, by warrant from two justices of *Middlesex, Surry, London, or Westminster.* s. 3.

And immediately after *Easter* sessions yearly, the clerk of the peace in the county shall certify to the lord mayor of *London*, and to the respective clerks of the peace for *Middlesex, Surry, and Westminster*, the rates made for the carriage of goods, in their respective counties and places; which certificate, or an attested copy thereof, signed by the officer to whom the same shall be transmitted, shall be sufficient evidence of the prices so set. *Id.*

Shall have his name, &c.

And every common waggoner, or carrier, shall have his Christian and surname, and place of abode, in large or capital letters, placed upon some conspicuous part of his carriage, before he shall drive the same, on pain of 20*s.* to be levied and recovered as aforesaid. s. 4.

This act of 21 G. II. c. 28. appears to be repealed by the 7 G. III. c. 40. and the 13 G. III. c. 84; but this is doubtless a mistake; the repeal is probably intended only for so much of the said act as relates to turnpike roads, and not to the price of the carriage of goods.

Carrier losing goods.

If a man delivers goods to a common carrier, to carry to a certain place; if he loses them, an action upon the case lies against him; for, by the custom of the realm, he ought to carry them safely. 1 *Bac. Abr.* 343.

And if he be a common carrier, though there be no agreement or rate settled, or promise of payment, yet he may recover his hire on a *quantum meruit*, and therefore shall be liable for loss and damages. *Id.*

Also, if a person, who is not a common carrier, takes upon himself to carry my goods, though I promise him no reward, yet if my goods are lost or damaged by his default, I shall have an action against him. *Id.*

For the very taking of the goods is a general consideration, though the person be not a common carrier; and the acceptance of the goods makes him liable, *Shorw.* 104.

If a man delivers goods to a common hoyman, who is a common carrier of goods, to carry them to a certain place, and pays him according to the custom for the carriage of them; and after, for default of keeping, they are *lost*, an action upon the case lies against him; for, by the common custom of the realm, he ought to have kept and carried them safely. *Gro. Jac. 330. Hob. 17.*

But, though the common carrier is, in general, ^{Carrier not accountable for loss occasioned by the act of God.} accountable for the *loss* or *damage* of goods delivered to him as a common carrier, yet there are particular exceptions, As in the case of *Amiens v. Stephens*, *M. 5. G.* The plaintiff put goods on board the hoy of the defendant, who was a common carrier: coming through bridge, by a *sudden gust of wind*, the hoy sunk, and the goods were spoiled. The plaintiff insisted that the defendant should be liable, it being his carelessness in going through at such a time; and offered some evidence, that if the hoy had been in good order, it would not have sunk with the shock it received; and from thence inferred the defendant answerable for all accidents, which would not have happened to the goods in case they had been put into a better hoy. But the chief justice held the defendant not answerable, the damage being occasioned by the act of God. For, though the defendant ought not to have ventured to shoot the bridge, if the general bent of the weather had been tempestuous; yet this being only a sudden gust of wind had entirely differed the case: and no carrier is obliged to have a new carriage for every journey; it is sufficient if he provides one, which, without any extraordinary accident, (such as this was) will probably go the journey. *Str. 128.*

Edwards and others v. Sherratt, *Tr. 41 G. III.* The defendant, a common carrier to and from *B.* through *W.* to *R.* employs distinct boats to carry to and from *B.* to *R.* and to and from *B.* to *W.* which pass on different days. The plaintiff knowing this, and having corn at *W.* which is threatened to be seized by a mob, writes to the defendant at *B.* to send a *private* boat quickly, on account of the state of the country, to take the corn to *B.* to which the defendant not returning any answer, and the plaintiff fearing to wait till the day the defendant's boat would in the usual course of employment go from *W.* to *B.* stops the boat passing by from *R.* to *B.* and without disclosing the circumstances to the boatman, prevails on him to take the corn on board, and then dispatches him forward in the night,

Respecting the violence of a mob.

night, having privately sent orders to open the lock at any time, when he should pass. After a verdict for the defendant, negating that the corn was delivered in the usual course of dealing, as a common carrier; held that the verdict might be sustained, either on the general ground of fraud in the plaintiff, or on the circumstances of the case, furnishing altogether evidence of a tacit stipulation on the part of the defendant, to do the best he could, but not to be answerable as a common carrier for the violence of the mob; or because it did not appear that the boatman, whose ordinary employment was between *R.* and *B.* had authority from the defendant to accept the goods at *W.* for *B.* much less to accept them in that manner. 1 *East's Rep.* 604.

Plundering
a ship.

In the case of the master of a ship it appeared that there was a sufficient crew for the ship, but that at night eleven persons boarded her as pirates, under pretence of pressing, and plundered her of the goods: the court adjudged that the master was liable, for superior force shall not excuse him. 1 *Vent.* 109. *Barclay v. Higgins*, *E.* 24 *G. III.* See 1 *Durnf & East*.

Ferry-boat
in a tem-
pest.

A. with several others, takes a passage in a ferry-boat, and, while they are on the water, a tempest arises, so that they are in danger of being drowned; upon which to preserve their lives, several articles are thrown over-board, and, among them, a pack of goods of great value, belonging to *A.*—In this case, *A.* shall have no action against the bargeman. 2 *Bull.* 280.

A carrier by
water, who
had given
notice not
to be an-
swerable for
any dama-
ges.

A carrier by water contracting to carry goods for hire impliedly premises that the vessel shall be tight and fit for the purpose, and is answerable for damage arising from leakage. And this, though he had given notice "that he would not be answerable for any damages unless occasioned by want of ordinary care in the master or crew of the vessel, in which case he would pay 10*l.* per cent upon such damage, so as the whole did not exceed the value of the vessel and freight." For a loss happening by a personal default of the carrier himself (such as the not providing a sufficient vessel) is not within the scope of such notice; which was meant to exempt the carrier from losses by accident or chance, &c. even if it were competent to a common carrier to exempt himself by a special acceptance, from the responsibility cast upon him by the common law for a reasonable reward,—to make good all losses not arising from the act of God, or the

the king's enemies. *Lyon v. Mells, Tr. 44 G. III. 5 East's Rep.*

If a carrier be *robbed*, he shall answer the value of the goods; for he has his hire, which implies an undertaking for the safe custody and delivery of them, which charges him at all events: and this political institution was introduced the better to secure people in their dealings, and to prevent carriers who are often intrusted with things of the greatest value, from confederating with robbers, &c. *Co. Litt. 89. 1 Salk. 143.*

But if a common carrier receives, by his book-keeper, from another person's servant, two bags of money sealed up, containing, as he was told, 200*l.* and the book-keeper gives a receipt for his master to the following effect: "Received of *A. B.* two bags of money, sealed up, said to contain 200*l.* which I promise to deliver on such a day at such a place to such a person, he to pay 10*s.* per cent. for carriage and risque;" though the bags contain 400*l.* and the carrier is *robbed*, he shall be answerable for only 200*l.* for this is a particular undertaking; and it is by reason of the reward that the carrier is liable; if the plaintiff endeavours to defraud him of it, it is but reasonable that he should be barred of the remedy, which is only founded on the reward. *1 Bac. Abr. 346.*

A carrier is not accountable for cash, or other valuable articles, unless delivered to him as such, and paid for at an advanced rate; as in the case of *Gibbon and Paynton, E. 9 G. III.* The *Birmingham* coachman had inserted an advertisement in a *Birmingham* newspaper, with a *nota bene*, that he would not be answerable for money, or jewels, or other valuable goods, unless he had notice that it was money, or jewels, or valuable goods that was delivered to him to be carried. It was also notorious in that country, that the price of carrying money from *Birmingham* to *London* was three-pence in the pound. The sum of 100*l.* was delivered to the coachman, as a common carrier, packed up with some hay in an old nail-bag, and it was concealed from him that such bag contained any money. The bag and the hay arrived safe, but the money was gone. The court were of opinion that a common carrier ought not to be answerable where he is deceived. The true principle of a carrier's being answerable is the reward: a higher price ought in conscience to be paid him for the insurance of money and other valuable things, than for insuring common goods of little value.

He may make a special contract, or he may refuse to contract, in extraordinary cases, but on extraordinary terms. *Burr. Mansf.* 2298. [N. B. Under a special or qualified acceptance, the carrier is bound no farther than he undertakes.]

Goods delivered to go by the mail, paying no extra price.

Nicholson v. Willan. Mich. 45 G III. Where one delivered goods of above 5*l.* value to common carriers to carry *by the mail*, paying no extra price; and by a public notice, which had before reached the owner, the carriers had declared they would not be accountable for any package *above* the value of 5*l.* unless insured, and paid for accordingly: held that the goods having been sent by a different carriage and lost, the owner could not recover the value against the carriers: for the loss happened by no tortious conversion, nor by a renunciation of their character as common carriers, but only by a negligent discharge of their duty as such. Nor could he recover even the 5*l.* as by the terms of the notice the carriers stipulated not to be answerable at all for goods above 5*l.* value, unless paid for accordingly. 5 *East's Rep.* 507.

Illustration.

And in the case of *Burton v. Bolton, E. 32 G. III.* a similar judgment was given. This was an action to recover from the defendant, as the proprietor of a Chester coach, thirteen pounds thirteen shillings, the value of several articles of wearing apparel, which were lost in their carriage to Chester. Mr. *Mingay*, counsel for the plaintiff, said his client was a gentleman's servant—the defendant was the master of the Golden Cross Inn at Charing-Cross. The question, and that for the decision of the jury would be, "Whether the plaintiff, when the trunk was delivered, knew, or had the means of knowing, that the defendant would not be responsible for any greater loss than 5*l.* without an extra payment." A witness proved the delivery of the trunk at the inn. Mr. *Erskine*, counsel for the defendant, said his client had caused hand-bills to be distributed, advertisements in the newspapers to be inserted, and affixed a board in his warehouse, announcing that he would not be responsible for more than 5*l.* unless the value of the property was specified upon delivery, and paid for accordingly. Mr. *Mingay*, for the plaintiff, replied, that his poor client knew nothing about these advertisements, and he should prove that the board at the warehouse, which contained this information, was not legible. An attorney's clerk said, he had been at the defendant's warehouse more than

ten times, and had never seen this board till after the present action was brought. The board was placed in a dark part of the warehouse, and it was with difficulty it could be read. Lord *Kenyon*, in his address to the jury, said, he spoke only the same language which his predecessors had done, when he declared that it was notorious to the world that stage-coaches and waggons made exceptions as to their responsibility, for losses when the goods amounted to a certain value. This was a thing so settled by the common consent of mankind, that it would be the most dangerous thing in the world to alter it. If it were to be held, that stage-coaches and waggons were answerable for valuable things, unless they were paid for as such, and thereby a superior degree of attention excited, it would deprive the public of all the advantages that were derived from these conveyances. A man might send a service of plate worth many thousand pounds by one of these coaches, and book it as a common parcel; if it was lost, and the proprietor of the coach was liable, it might ruin him. An instance of this sort had actually happened: a nobleman sent plate, to the value of 2000*l.* by one of those conveyances, which was taken out, but was not paid for. When a parcel was paid for as containing valuable articles, the proprietor of the coach and his servants were put upon their guard; and if they did not bestow a superior degree of attention, they were inexcusable; and if the goods by their negligence were lost, it would be no hardship to compel them to pay. The jury found a verdict for the defendant, and recommended it to him to put a board in the most conspicuous part of his warehouse, so that no person who came there could help seeing it. *M. S.*

If a carrier has goods *stolen* from him, he may prefer an indictment against the felon, as for his own goods; for, though he has not the absolute property, he has such a possessory property, that he may maintain an action of trespass against any one who takes them from him, and may therefore indite a thief for taking them. The indictment would also have been good, had it been brought by the real owner. *Kelynge, 39.*

It is said a man may commit larceny, by stealing his own goods delivered to the carrier, with intent to make him answer for them; for the carrier had a special kind of property in the goods, in respect whereof, if a stranger had stolen them, he might have been indicted generally.

rally as having stolen the said carrier's goods; and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner. 1 *Haw.* 94.

He is accountable in case of fire.

Carriers are accountable in case of *fire*, as determined in *M. 25 G. III. Ferward v. Pittwood*. This was a special case, reserved for the opinion of the court. The defendant was a common carrier, to whom the plaintiff had delivered a parcel of hops, to be carried by the defendant's waggon. The defendant put them into his warehouse, and, during the night, a fire broke out in the adjoining house, which communicated to, and burnt the defendant's warehouse, and with it the plaintiff's goods. The question before the court was, whether the plaintiff was entitled to recover. The case was argued by *Bond* for the plaintiff, and *Burrough* for the defendant. By Lord *Mansfield*: Upon all the cases for upwards of one hundred years, it is most clear that there are events in which the carrier is answerable, though not guilty of any neglect: by the nature of the contract, he obliges himself to use all due care and diligence, and is answerable for any neglect; but there is something more imposed upon him by custom, that is, by the common law. A common carrier is in the nature of an *insurer*; all the cases shew him to be so. This makes him liable to every thing except the act of God, and the king's enemies; that is, even for inevitable accidents, with those exceptions. The question then is, What is the *act of God*? I consider it to be laid down in opposition to the *act of man*; such as lightnings, storms, tempests, and the like, which could not happen by any human intervention. To prevent litigation and collusion, the law presumes negligence, except in these circumstances; an armed force, though ever so great and irresistible, does not excuse: the reason is, for fear it should give room for collusion, which can never happen with respect to the act of God; we all, therefore, are of opinion, that there should be judgment for the plaintiff. *M. S.*

But not in the following case.

But not in the following case; *E. 32 G. III. Garfide v. the proprietors of the Trent and Mersey navigation*. The declaration in this case stated, that the defendants were common carriers of goods, &c. for hire, from Stourport to Manchester; and that the plaintiff, on, &c. at Stourport, delivered to the defendants four pockets of hops, to be by them taken care of, and safely and securely carried from Stourport to Manchester, and to be forwarded from

from thence to Stourport for the plaintiff: That in consideration of the premises, and also in consideration of certain hire and reward to be therefore paid to the defendants, they undertook to take care of the said hops, and safely and securely to carry them and forward the same; yet that the defendants did not forward the said hops from Manchester to Stourport. The second count stated the delivery of the hops to the defendants, to be taken care of, and safely and securely carried from Stourport to Manchester; and there kept by the defendants for the plaintiff, until the same should be forwarded from Manchester to Stourport, &c. At the trial before *Wilson, J.* it appeared that the goods, directed to the plaintiff at Stourport, were delivered to the defendants, to be carried by them from Stourport to Manchester; that they arrived safe at Manchester on the 30th of September, and were that evening put into the defendants' warehouse there, where (together with other goods) they were consumed by an accidental fire that night, and before any carrier came from Stourport, to whom they could be delivered. It also appeared that, according to the course of business, when goods are sent from Stourport to go beyond Manchester, if any carrier to the place of their destination be at Manchester ready to receive them, they are immediately delivered upon payment of the carriage from Stourport to Manchester, and if not, the defendants keep them in their warehouse till a carrier arrives, to whom they may be delivered on making the above payment, the defendants *not charging any thing for lodging and keeping the goods in their warehouse.* Some time before the goods in question were delivered to the defendants, their agents told the plaintiff, that if he would send all his goods by them, they would forward them to Stourport by the first carrier that should come there, without insisting on being paid for the carriage before they delivered them, and would settle with him when they met. A verdict was taken for the defendants, with liberty to plaintiff to move to set it aside and to enter up a verdict for him, if this court should be of opinion that the defendants were answerable under these circumstances. *Bower* accordingly now moved to set aside the verdict; contending that the defendants were responsible, as it was a joint contract by them to carry the goods to Manchester, and to keep them safe at that place till they could be forwarded to Stourport; and that it was for their convenience

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venience that the goods were deposited in their warehouse. The court refused even a rule to shew cause.

Lord *Kenyon*, Ch. J. If the defendants were considered merely as warehouse-men, there would be no pretence to say that they were liable to such an accident as the present. The case of a carrier stands by itself, on peculiar grounds; he is held responsible as an insurer; and the reasons given in the books (whether well or ill founded is immaterial here) is to prevent fraud. But I do not see how we can couple the character of the carrier with that of the warehouse-man, in which last the defendants are not liable here, they not having been guilty of laches. *Buller*, J. The keeping of the goods in the warehouse is not for the convenience of the carrier, but of the owner of the goods; for, when the voyage to Manchester is performed, it is the interest of the carrier to get rid of them directly; and it was only because there was no person ready at Manchester to receive these goods, that the defendant was obliged to keep them. Rule refused. 4 *Durnf. & East*, 581.

A circuitous attempt to deliver goods.

E. 40, *Ellis v. Turner*. The owners of vessels on the navigation between *A*. and *C*. having given public notice that they would not be answerable for losses in any case, except the loss were occasioned by the want of care in the master, nor even in such case beyond ten *per cent.* unless extra freight were paid; the master of one of the ships took on board the plaintiff's goods to be carried from *A*. to *B*. (an intermediate place between *A*. and *C*.) and delivered at *B*: the vessel passed by *B*. without delivering the plaintiff's goods there, and sunk before her arrival at *C*; without any want of care in the master. Held that the owner of the vessel was responsible to the plaintiff for the whole loss in an action on the contract. 8 *Durnf. & East*, 531.

If a box is delivered generally to a carrier, and he accepts it, he is answerable, though the party did not tell him there is money in it. But if the carrier asks, and the other says no, or if he accepts it conditionally, provided there is no money in it, in either of these cases the carrier is not liable. *Str.* 145.

Taking goods to another place.

It has been resolved, that, if goods are delivered to a carrier to be carried to a certain place, and he carries them to another place and disposes of them to his own use, this is felony; because it appears that his intention originally was not to take the goods upon the agreement
and

and contract of the party, but only with a design of stealing them. *Kelynge*, 82.

And it seems clear, that if a carrier, after carrying the goods to the place appointed, takes them away secretly, with intent to steal them, he is guilty of felony; for, as the possession which he received from the owner is determined, his second taking will be in all respects the same as if he were a mere stranger. 1 *Haw.* 90.

But it has been held, that if a carrier embezzles goods which he has received to carry to a certain place, he is not guilty of felony, because there was not a *feloniously taking*, and he is liable only to a civil action. 1 *Haw.* 89, 90.

A carrier shall not evade the law, by refusing to carry goods at the prices limited: for if a common carrier, who is offered his hire, and has convenience, refuses to carry goods, he is liable to an action, in the same manner as an innkeeper, who refuses to entertain a guest, or a smith who refuses to shoe a horse. 1 *Bac. Abr.* 344.

An action will also lie against a common ferryman, who refuses to carry passengers. *Id.*

In an action against a carrier for negligently carrying a pipe of wine, which by that means burst, and the wine was spilt, it was good evidence for the defendant that the loss happened while he was driving gently, and arose from the wine being in a ferment; so that the loss was occasioned by its being sent in that state. *Bull. N. P.* 74.

But if the porter puts up the box of a passenger behind a stage coach, and the master, as soon as he knows of it, says, he is already full, and refuses to take the charge of it, the master shall not be liable. For his situation is similar to that of an host who refuses his guest, his house being full, and yet the party says he will shift, or the like, if he should be robbed, the host is discharged. *Id.*

A carrier may also refuse to admit goods into his warehouse at an unreasonable time, or before he is ready to take his journey, but he cannot refuse to do the duty incumbent upon him by virtue of his public employment. *L. Raym.* 652.

A delivery of goods to the carrier's servant, is a delivery to the carrier; and if they are delivered to a carrier's porter and lost, an action will lie against the carrier. *Read Car.*

A carrier may refuse to deliver goods without being paid

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paid his hire, as determined in the case of *Skinner and Upshaw. E. 1 Ann. L. Raym. 752.*

Carrier
may detain
Goods.

And if the goods are stolen, the right owner shall not have them without paying for the carriage: for as the carrier is obliged to receive and carry them, the law will not deprive him of the remedy for the reward due for the carriage.

This point was determined in the case of *York v. Greenough. L. L. Raym. 866.*

With respect to the penalties on carriers travelling on a Sunday, see LORD'S DAY.

Carrots. See CABBAGES.

N. B. *The penalty for stealing Carrots is the same as that for stealing turnips, potatoes, cabbages, parsnips, and peas; which are treated on together under the title CABBAGES.*

CARRIAGES.

CLASS I. NUMBER OF CARRIAGES.

For Carriages with Four Wheels:

		Amount of Duty for each Carriage.		
By the 43 G. III, &c. For 1 such		£.	s.	d.
Carriage, the annual Sum of - - -		10	0	0
2 - Ditto - - - - -		11	0	0
3 - Ditto - - - - -		12	0	0
4 - Ditto - - - - -		12	10	0
5 - Ditto - - - - -		13	0	0
6 - Ditto - - - - -		13	10	0
7 - Ditto - - - - -		14	0	0
8 - Ditto - - - - -		14	10	0
9 - Ditto - - - - -		15	0	0
And for every additional body successively used on the same carriage or number of wheels, the further sum of - - - -		5	0	0

CLASS II.

For Carriages with less than Four Wheels.

For every such carriage (except taxed carts, constructed, kept, and used, under the regulations of this act) drawn by one horse, mare, or gelding, and no more - - - 5 5 0
And

Carriages.

43

And for every such carriage, drawn by two or more horses, mares, or geldings -	£. s. d. 7 7 0
And for every additional body, of the description hereinafter mentioned, successively used on the same carriage or number of wheels, the further sum of - - - - -	2 10 0

RULES for charging the said duties in the two foregoing Schedules :

I. The said duties to be charged for every coach, berlin, landau, chariot, calash, chaise marine, chaise sociable, or caravan with four wheels ; and for every calash, chaise marine, chaise, curricule, chair or car, with less than four wheels, or any number thereof respectively ; and for every other carriage with four wheels, or with less than four wheels, respectively used for the like purposes, by whatever names the same shall be called, *kept * by any person for his own use*, or hired by the year, or any longer period ; and upon all such carriages kept to be let out to hire, or to carry passengers for hire (except such carriages for which other duties are hereinafter payable) and which duties shall be paid by the person keeping such carriages, and shall be chargeable upon the body, or if more than one, upon the bodies of such carriages, according to the number thereof successively used on the same carriage or number of wheels, and not in respect of the wheels thereof, or any other parts of such carriages to which the wheels shall be attached.

CLASS III.

For carriages hired for any period of time less than one year, or kept to be let out to hire, or to carry passengers :

For every such carriage kept for the purpose of being let to hire, with horses to be used therewith, for not exceeding twenty-eight days, so that the Stamp Office duty, payable on horses let to hire, shall be paid by any postmaster, innkeeper, or other licensed person, and whereon the name and abode of the licensed person shall be painted, if such carriage shall have four wheels - - - - -	£. s. d. 8 8 0
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** It may be of some importance to many to be informed, that from the opinion of the Judges, on a case some time since stated, persons barely keeping a carriage of any description, though not intended to be used, are liable to be charged ; and that, although it is merely kept till it can be disposed of.*

G

And

Carriages.

£. s. d.

And if such carriage shall have less than four wheels, the sums mentioned in Class II. according to the number of horses used therewith, as therein mentioned.

And for every coach, diligence, caravan, or chaise, with four wheels or more, or other carriage with four wheels or more, by whatever name the same shall be called, kept as a public stage coach, and entered as such with the Commissioners of Stamps, the like sum of

8 8 0

All which duties shall be paid by the person keeping the same.

For every carriage kept for the purpose of being let to hire, for less than one year, and in such manner that the stamp office duty shall not be payable on such letting, if such carriage shall have four wheels, the annual sum of

10 0 0

The said duty to be paid by the person keeping the same.

But if a due return thereof shall not be made by the hirer, the progressive duty, set forth in Class I, shall be chargeable in respect of every such carriage on the person hiring the same, and making such default.

And if such carriage shall have less than four wheels, the respective sums mentioned in Class II, according to the number of horses to be used therewith, to be paid by the person keeping the same.

And the said duties shall be charged on carriages let to hire as aforesaid, by any assessment of the duties on carriages payable at the time of passing this act, which shall have been, or shall be made at any time after the 5th of April, 1803, for the present year, on the person so letting the same; and every assessment made at any higher rate shall, on appeal, be rectified by the commissioners.

STAGE COACHES.

Carriage, with two or more wheels, employed as a public stage coach, and which shall be licensed for carrying not more than four inside passengers, (children in lap excepted), for every mile such carriage shall travel, 2d.

For carrying more than four, but not more than six inside passengers, for every mile, 2½d.

For carrying more than six, but not more than eight inside passengers, for every mile, 3½d.

For

Carriages.

43

For carrying more than eight, but not more than ten inside passengers, for every mile, 4d.

For carrying more than ten inside passengers, for every mile, 5d.

Exemption.] Hackney coaches, licensed by the commissioners for licensing such coaches.

Every person licensed to keep any public stage coach, shall paint on the outside of each door, or on some other conspicuous part, in letters of two inches in length, and in a different colour from the ground, "Licensed to carry not exceeding four, six, eight, ten," or more passengers, as the licence shall specify; and if any person shall make use of any carriage, without having the said words, or shall at any time carry more inside passengers than specified in the licence, and the words painted, such person shall forfeit 20l. 44 G. 38. c. 9. s. 13.

NEW STAGE COACH ACT.

From and after 1st Sept. one thousand eight hundred and six, it shall not be lawful for the drivers or the owner of any coach, chaise, or other carriage of the like sort, going or travelling for the purpose of conveying passengers for hire, to and from different places in Great Britain, to permit and suffer, in any manner or way, where such carriage is drawn by less than four horses, more than five persons at one and the same time, to ride or go as outside passengers on or about the outside, exclusive of the coachman and guard to the same.

And if drawn by four or more horses, more than ten persons, from the twenty-ninth of September to the first of April, exclusive of the coachman and guard to the same.

And more than twelve persons, from the first of April to the twenty-ninth of September, exclusive of the coachman and guard.

Nothing in this act shall authorize the carrying of more than one person on the box with the coachman, upon pain to forfeit, according to 28 G. III. c. 57. 40s. for every person so riding or going, over and above the number limited, and if the driver be the owner, 4l.

And it shall not be lawful for any driver, owner, or proprietor, to permit any parcel or luggage, to be conveyed on the roof, where any outside passengers are conveyed on the roof thereof, being more than two feet above the roof (unless the same shall consist of empty boxes or baskets)

Carriages.

kets) on pain, on being convicted, either by confession, the view of a justice, or the oath of one witness, to forfeit twenty shillings for every foot exceeding two feet; and in case the driver shall be the owner, the sum of forty shillings; and in default of payment, the person offending shall be committed to gaol for one month.

In case the driver, stopping at any place where assistance can be procured, shall quit the box, until a proper person shall hold the horses or fore horses whilst such carriage stops, so as to prevent them running away, such person to hold the same until the driver has returned to his box, and has in his hands the reins for guiding the said horses; and if such driver shall neglect to attend to the same, or such person shall quit holding the said horses before the driver has the reins in his hands, they being duly convicted by confession, the view of a justice, or by the oath of one witness, shall forfeit forty shillings. But this section shall not extend to hackney coaches or carriages drawn by two horses only.

In case the driver or the guard, shall become incapable of driving, or of properly attending to the concern by reason of intoxication or otherwise, whereby the safety of the passengers may be endangered; or if such driver or guard shall not duly account to his employers for all monies received either in respect of any passenger or parcel; then the driver or guard, so offending, and being convicted as aforesaid, the justice is to commit to the common gaol or house of correction for not exceeding six nor less than three calendar months.

But every information under this act, shall be exhibited within twenty-one days; and where a summons is left with any book-keeper, the same shall be left ten days before the day requiring the party to appear,

CLASS IV. TAXED CARTS.

For every carriage with less than four wheels, to be drawn by one horse, and no more, which shall be built wholly of wood and iron, without any covering other than a tilted covering, and without any lining or springs, whether the same be made of iron, wood, leather, or other materials, and with fixed seat, without slings or braces, and without any ornament whatever, other than paint of a dark colour for the preservation of the

5 wood

wood or iron only, and which shall have the words "a Taxed Cart," and the owner's christian and surname, and abode, painted on a black ground in white letters, or on a white ground in black letters, on the outside of the back pannel or back part of such carriage, in words at full length, each of the letters thereof being at least one inch in length, and of a breadth in proportion, and the price of which (repairs excepted) shall not have exceeded, or the value thereof shall not at any time exceed 12*l.* sterling, which shall be kept by any person for his own use, and not for hire, the annual sum of - - - - - 1 4 0

Except always all carriages built as aforesaid, belonging to any person, who shall be liable to be assessed to the before-mentioned duties in respect of a four-wheeled carriage, or who shall be liable to be assessed to the duties on male servants in respect of two such servants, which persons shall be charged for such carriages, although built as aforesaid, at the rate prescribed in Class II.

Exemptions from the several Duties in Classes I, II, III, and IV.

Case 1. Any carriage belonging to his Majesty, or any of the Royal Family.

Case 2. Hackney coaches in London and Westminster.

Case 3. Any carriage kept by any coachmaker at any time after the 5th of April, 1803, *bona fide* for the purpose of sale, or of being lent to any person whose carriage being of the same description, shall be then making, mending, or repairing, and during the time the same shall be necessarily under repair; provided such carriage shall not, at any time, whilst in the possession of such coachmaker, be employed for his own use, or let to hire, or otherwise lent than as aforesaid.

CATTLE.

BY the 28 Henry VIII. c. 13. for the encouragement What
of tillage, and to prevent the engrossing of farms in a few number of
hands, no man shall keep above 2000 sheep, at six score to sheep may
the hundred, over and above what is necessary for his be kept.
household;

household; except it be upon his own proper estate, on pain of 3*s.* 4*d.* for every sheep above that number: half to the king, and half to him that shall sue for the same, in any court of record. Provided, that lambs shall not be accounted sheep, so long as they be under the age of a year.

Cattle not
to be
bought and
sold again
in the same
market.

By the 3 and 4 *Ed. VI. c. 19.* no person shall buy any ox, steer, runt, cow, &c. and sell the same again alive, in the same market, or fair, on pain of forfeiting double, half to the king, and half to him that shall sue.—This is not repealed by 12 *G. III. c. 71*, which repeals the general forestalling, ingrossing, and regrating act of 5 and 6 *Ed. VI. c. 14.* and other subsequent acts enforcing the same, but has no reference to any preceding act.

Court of Common Pleas, June 7, 1796.—Williams v. Hancock.—This was an action brought by the direction of the Lord Mayor, upon an act of Parliament passed in the 3d and 4th years of King Edward VI. to recover double the value of certain cattle bought by the defendant in Smithfield market, and sold by him again on the same day alive.

The facts of this case were briefly these:—On Monday, the 28th December last, the Defendant bought two heifers and three steers, of Joseph Bull, a salesman from Leicester, for the sum of 80*l.* 10*s.* and immediately afterwards the same beasts were driven to one Pooley, the Agent of the Defendants, for him to sell again, which he did to several butchers, for the sum of 87*l.* 10*s.* being a profit of 7*l.* upon the five beasts, *Mr. Serjeant Shepherd*, on the part of the Defendant, contended, that the act of Parliament on which the action was brought was repealed; but the Lord Chief Justice said, the point of law had been raised before the Court of Common Pleas, and there solemnly decided; and that before he was aware of that decision, he had looked into the subject, and the final result of his opinion upon it was, that the Act was in force, so that there was no question at all upon that. The Defendant not calling any witnesses, the Lord Chief Justice observed to the Jury, “that a number of witnesses had been called on the part of the Plaintiff, whose evidence taken together certainly constituted a greater body of evidence than could well have been expected in a business of this nature, and which did great credit to the parties concerned: that it was very much for the benefit of the public, that actions upon this salutary law should be brought,

as this was a most pernicious practice, and he was not aware till he heard this case that it existed to such a degree. His Lordship further observed, (in allusion to an expression made use of by Mr. Serjeant Shepherd) that he thought of all the evidence he remembered to have been brought forward upon a penal action, he hardly ever saw evidence so directly "*hit the bird in the eye*," as that which had been given on the present occasion, and that it was fit, whenever the case could be fairly brought home, that the person concerned should be made the subject of the charge in every particular; and therefore, if the Jury were of that opinion, they would give their verdict for the whole penalties;" which they immediately did, amounting to 175*l*. Thus it seems clear that though all the other statutes concerning forestalling, ingrossing, and regrating, are repealed, this 3 and 4 *Ed. VI. c. 19.* remains in full force. Also by the common law, persons of that description are indictable, and liable to fine and imprisonment; but till the restoration of the old statutes (which would be effectually done by the repeal of the 12 *G. III. c. 71.*) forestalling, ingrossing, and regrating will increase, there being no penal statute, except that of 3 and 4 *Ed. VI.* to deter offenders, and encourage informations.

A similar adjudication took place in the Court of Common Pleas, *Williams v. Homingway*. The defendant purchased an ox in Smithfield market for 19*l*. and sold it in the same market for 20*l*. the same day. The jury gave a verdict for 38*l*. being double the price.—*M. 1795.*

If any person shall feloniously drive away, or steal, or shall wilfully kill any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb, with a felonious intent to steal the whole carcase, or any part thereof, or shall assist in committing any such offence, he shall be guilty of felony, without benefit of clergy, 14 *G. II. c. 6.* 15 *G. II. c. 34.* Stealing or killing any ox, bull, &c.

And every person, who shall apprehend and prosecute to conviction any offender, shall have 10*l*. reward; to be paid by the sheriff, within a month, on his producing a certificate from the judge.

By the 22 and 23 *C. II. c. 7.* If any person shall, in the night-time, maliciously, unlawfully, and willingly kill and destroy any horses, sheep, or other cattle, he shall be guilty of felony. *f. 2.* Killing cattle in the night.

And if any person shall, in the night-time, maliciously unlawfully, and willingly, maim, wound, or otherwise hurt

hurt any horses, sheep, or other *cattle*, whereby the same shall not be killed or utterly destroyed, he shall forfeit treble damages, by action of trespass, or upon the case.

Killing, or
wounding
by the
black act.

Also by the 9 *G. c. 22.* (usually called the *Black Act*) any person who shall unlawfully and maliciously kill, maim, or wound any *cattle*, shall be guilty of felony, without benefit of clergy.

And the hundred shall be answerable for the damages, not exceeding two hundred pounds.

Horses and
colts includ-
ed in the
word *cattle*,
the 9 *G. I.*
being in-
tended to
extend to
offences
described
in 22 and
23 *C. II.*
c. 7.

Horses, mares, and colts, are included in the word *cattle*, as determined in the following case. At Abingdon Summer Assizes, 1770. John Patty was tried and convicted on the 9 *G. I. c. 22.* before Mr. Justice Blackstone, for maliciously shooting and killing *one mare*, of mixed red and white colour, and one brown *stone colt*, the property of Matthew Batten. The words of the statute are, "That if any person shall unlawfully and maliciously kill, maim, or wound any *cattle*, he shall suffer death without benefit of clergy." It was moved in arrest of judgment, that the indictment ought to have averred, that the *mare* and *colt* were *cattle*, within the meaning of the act, for that the word *cattle* did not necessarily include *horses*, *mares*, and *colts*. To support these objections, it was argued, that the legislature in the statute of 3 and 4 *Ed. VI. c. 19*; 5 and 6 *Ed. VI. c. 19*; and 31 *G. II. c. 40*, for regulating the sale of cattle, has thought it necessary to mention by *name*, the several species of beasts to which the provisions of these acts were designed to extend: that the 12 *C. II. c. 4.* distinguishes between the subsidy to be paid on *great cattle* imported, viz. 50s. and that which is to be paid on *horses* and *mares*, viz. 10l. that 22 *C. II. c. 13*, distinguishes between the encouragements given for breeding *cattle of all sorts*, and for breeding *horses*: that when 14 *G. II. c. 6*, made it felony, without clergy, to steal sheep, or *other cattle*, it was found necessary to specify, by 15 *G. II. c. 34*, what cattle were intended by the act, among which neither horses, mares, or colts, are included. On the first day of Michaelmas term, 1770, this case was submitted to the twelve judges at Serjeant's Inn; and they unanimously agreed, that as the statute of 22 and 23 *C. II. c. 7*, had made the offence of killing horses *by night* a single felony, this statute of 9 *G. I. c. 22*, was to be considered as an extension of that act; and some precedents of capital *convictions* were cited upon this branch of the statute, but none of *executions*.
It

It was agreed that judgment of death should be given against the prisoner at the next assizes; but he was then reprieved for transportation; and afterwards, upon strong application from the county, received a free pardon. *Leach's Cr. Law. Cas.* 38. p. 66.

In the case of Robert Mott, Old Bailey, September Session, 1783, convicted for wounding a gelding, an objection in arrest of judgment was over-ruled by Mr. Baron Hotham, upon the authority of the above case.

By the 21 G. III. c. 67. any peace officer may secure persons driving cattle through the streets of London, or Westminster, or the liberties thereof, &c. in an improper manner. If the party be convicted before a justice, he shall forfeit from 5s. to 20s. to the prosecutor; or be committed to the house of correction, &c. for one month. The same penalty against the owner or his servant.—Any justice within the bills of mortality may determine complaints of offences against any rules to be made by the court of aldermen. In pursuance of this act, the said justice is hereby authorized and required upon view, or upon complaint made upon oath, within six days after the commission of any such offence, to issue his warrant under his hand and seal, to apprehend such offender or offenders; and if the party be convicted, he may fine him, and the offender not paying the penalty, may be committed to the house of correction, to hard labour, for any time not exceeding one calendar month, unless the said penalty or forfeiture shall be sooner paid; which shall be paid to the person or persons who shall inform and prosecute to conviction any such offender or offenders.—Offenders, who refuse to discover their names and places of abode, shall be committed to the common gaol for one month, or until he, she, or they, shall declare his, her, or their name or names, and place or places of abode, to the said justice, or to some other justice of the peace of the said county or place.—An abstract of the penalties contained in this act, and of all rules, &c. shall be made by the court of aldermen, and be printed and affixed upon the most conspicuous places within the said cities of London and Westminster, and liberties thereof.→ No person shall suffer any punishment for any offence committed against this act, unless the prosecution for the same be commenced within fourteen days.—Persons aggrieved may appeal to the quarter sessions, giving fourteen days notice.

Punishment for driving cattle improperly in the streets of London.

Common. Corn.

The 10 G. III. c. 45. contains regulations to prevent the spreading of a contagious distemper among the horned cattle.

COMMON.

A custom for taking turf covered with grass from the waste in the manor, is bad in law.

A commoner may maintain an action on the case for an injury done to the common, by taking away from thence the manure which was dropped on it by the cattle; though his proportion of the damage be found only to the amount of a farthing; at least the smallness of the damages found is no ground for a non-suit. *Pindar v. Wadsworth, Hill 42 G. III. 1 East's Rep. 154.*

A custom that all the customary tenants of a manor, having gardens parcels of their customary tenements respectively, have immemorially by themselves, their tenants, and occupiers, dug, taken, and carried away from a waste within the manor, to be used upon their said customary tenements, for the purpose of making and repairing grass-plots in the gardens, parcels of the same respectively, for the IMPROVEMENT thereof, such turf covered with grass, fit for the pasture of cattle, as hath been fit and proper to be so used, at all times of the year, as often, and in such quantity as occasion hath required, is bad in law, as being indefinite and uncertain, and destructive of the common: and so is a similar custom for taking and applying such turf for the purpose of making and repairing the banks and mounds in, of, and for the hedges and fences of such customary tenements. *Wilson v. Willes, Knt. Hill. 46 G. III. 7 East's Rep. 121.*

Martyn v. Knowllys, Hill. 39 G. III. One tenant in common, cannot maintain an action on the case in nature of waste, against another tenant in common (in possession of the whole, having a demise of the moiety from the first) cutting down trees of a proper age and growth for being cut. *8 Durnf. & East, 145.*

CORN.

Buying corn in the sheaf.

To buy or sell corn in the sheaf, before it is threshed and measured, is against the common law of England. *3 Inst. 197.*

Selling corn otherwise than by Winchester measure

By the 22 C. II. c. 8. s. 2. Any person who shall sell corn otherwise than by Winchester measure, sealed and stricken by the brim, shall, on conviction before one justice, on the oath of one witness, forfeit 40s. to be

levied

levied by the churchwardens and overseers, or some of them, to the use of the poor, by distress and sale; and in default of distress to be imprisoned till paid.

And if any mayor, or other head officer shall knowingly permit the same, he shall, upon conviction at the county sessions, forfeit 50*l.*; half to the prosecutor, and half to the poor, by distress and sale. For want of distress, to be imprisoned by warrant of the justices, till payment be made.

Also by the 22 and 23 C. II. c. 12. *f.* 2. Every person who shall sell or buy corn without measuring, being thereunto required, or in *any other* manner than as directed by the 22 C. II. c. 8. (as above-mentioned) and that without the shaking of the measure by the buyer, he shall, besides the penalty of that act, forfeit the whole of the corn so bought or sold, or the value thereof to the party complaining.

And by the same statute, *f.* 3. On complaint made to a justice, that corn has been bought, sold, or delivered contrary to this act, the proof shall lie upon the defendant, to make it appear by oath of one witness, that he sold or bought the same unlawfully: and if he shall fail therein, he shall forfeit as before-mentioned, to be levied by distress and sale; to be distributed by the justice, half to the poor, and half to the informer.

It was formerly held, however, that notwithstanding the statutes respecting the uniformity of measures throughout the realm, the measure of corn differs in many places, the bushel being larger in one place than another: and though regularly a custom or prescription against a statute is void, except it be confirmed or saved by another statute; yet it is said that, in the measure of corn, the custom of the place is to be observed, if it be a custom beyond all memory, and used without any visible interruption. *Barl.* 578.

But in a recent case, *viz.* *K. v. Arnold Tr.* 33 G. III. it was determined otherwise. This was a conviction against a buyer of corn by a measure different from the Winchester measure, and the conviction was affirmed. The court was of opinion that the statute 22 and 23 C. II. c. 12. instead of saying expressly that the buyer shall be liable to the penalty of 40*s.* and to a forfeiture of the corn so bought, has said the same thing impliedly; for it says that he shall forfeit and lose, besides the penalty of the former act (which is 40*s.*) the corn so bought. See *5 Durnf. & East.*

Hunting
among corn

By the 23 *Eliz. c. 10.* No person shall hawk, or hunt with spaniels, in any ground where there shall be corn or grain which shall be eared or coddled, until the same shall be shocked, cocked, hiled, or cropped, upon pain of forfeiture for every time he shall so hawk or hunt (without the consent of the owner of the corn, &c.) the sum of 40s. to the owner of the said corn or grain.

Cutting
corn grow-
ing.

By the 43 *Eliz. c. 7.* Every person who shall unlawfully cut or take away any corn or grain growing, being convicted thereof by confession, or oath of one witness, before one justice, shall for the first offence pay such damages as the justice shall appoint; and if the justice shall think him not able or sufficient, or if he do not pay such damages, he shall commit him to the constable where the offence is committed, or where the party is apprehended, there to be whipped; and for every other offence he shall in like manner be whipped. The constable refusing, shall be committed by the justice, till he conform.

But if the person shall cut it at one time, and come again at another time and take it away, it is felony. *1 Haw. 93.*

See Title BURNING.

Unlawfully
taking corn.

By 11 *G. II. c. 22. s. 1.* Whoever shall wilfully and maliciously beat, wound, or use any other violence to any person, with intent to deter or hinder him from buying of corn in any market, or other place; or shall unlawfully stop or seize upon any waggon, cart, or other carriage, or horse, loaded with wheat, flour, meal, malt, or other grain, in the way to or from any city, market-town, or sea-port, and wilfully and maliciously break, cut, separate, or destroy the same, or any part thereof, or the harness of horses; or shall unlawfully take off, drive away, kill, or wound any of such horses, or unlawfully beat or wound the drivers, in order to stop the same; or shall scatter such wheat, flour, meal, malt, or other grain, or shall take and carry away, spoil, or damage the same, or any part thereof; every such person being thereof convicted, before any two justices of the peace, shall be sent to the common gaol, or house of correction, to be kept to hard labour for any time not exceeding three months, nor less than one month, and shall by the justices be ordered to be once publicly whipped by the keeper of such gaol, or house of correction, on the first convenient Market-day, in the Market-place, between the hours of eleven and two.

And

County-Rate.

53

And if the person so convicted, shall a second time commit any of the offences aforesaid, or if any person shall wilfully or maliciously pull down, or otherwise destroy any store house or granary, or other place where corn shall be then kept in order to be exported; or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, or grain therefrom, or shall throw abroad or spoil the same or any part thereof; or shall unlawfully enter on board any ship or vessel, and wilfully and maliciously take and carry away, cast out therefrom, or otherwise spoil or damage any meal, flour, wheat, or grain therein, intended for exportation, he shall be guilty of felony, and transported for seven years. *f. 2, 3.*

The last acts now in force to regulate the return of the prices of grain, are statutes 31 *G. III. c. 30.* 33 *G. III. c. 65.* The former statutes 1 *Jac. c. 19.* 1 *W. & M. c. 12.* 5 *G. II. c. 12.* 10 *G. III. c. 39.* 13 *G. III. c. 43.* 21 *G. III. c. 50.* and 29 *G. III. c. 58.* are all repealed; as also every provision in any other act for regulating the importation of wheat, &c. except such as relate to the making of malt for exportation, and the exportation thereof. So much of the 15 *G. II.* as prohibits the buying of corn to sell again, and the laying it up in granaries, is also repealed.

COUNTY-RATE.

BY the 12 *G. II. c. 29.* the justices, at their general or quarter sessions, or the greater part of them [and by 13 *G. II. c. 18.* justices of liberties and franchises not subject to the county commissioners] shall have power to make one general county-rate, to answer all former distinct rates, which shall be assessed on every parish, &c. and collected and paid by the high constables of hundreds to treasurers appointed by the justices; which money shall be deemed the public stock, &c. But appeal lies by the churchwardens and overseers against the rate of any particular parish. See stat. 22 *G. III. c. 17.*

For the repairing of bridges, and highways thereto adjoining, and salaries for the surveyors of bridges.

For building and repairing county-gaols. 11 and 12 *W. c. 19.*

For repairing shire-halls. 9 *G. III. c. 20.*

For the salary of the master of the house of correction, and relieving the weak and sick in his custody. 1 *Jac. c. 4.*

For

County-Rate.

For the relief of the prisoners in the King's Bench and Marshalsea prisons; and of poor hospitals in the county, and of those who shall sustain losses by fire, water, the sea, or other casualties, and other charitable purposes for the relief of the poor, as the justices in sessions shall think fit. 43 *Eliz. c. 2.*

For the relief of prisoners in the county gaol. 14 *Eliz. c. 5.*

For the preservation of the health of the prisoners. 14 *G. III. c. 59.*

For the salary of the chaplain of the county gaol. 13 *G. III. c. 58.*

For setting prisoners to work. 19 *C. II. c. 4.*

The treasurer's salary. 12 *G. II. c. 19.*

Salary of persons making returns of the prices of corn. 10 *G. III. c. 39.*

Charges attending the removal of any of the said general county rates by *certiorari*. 12 *G. II. c. 29.*

Money for purchasing lands at the ends of county bridges. 14 *G. II. c. 33.*

Charges of rebuilding or repairing houses of correction, and for fitting up and furnishing the same, and employing the persons sent thither.—Charges of apprehending, conveying, and maintaining rogues and vagabonds. 17 *G. II. c. 5.*

Charges of the soldiers' carriages, over and above the officers' pay for the same, by the several yearly acts against mutiny and desertion, and by the militia act. 2 *G. III. c. 20.*

The coroner's fee of 9*d.* a mile for travelling to take an inquisition, and 20*s.* for taking it. 25 *G. II. c. 29.*

Charges of carrying persons to the gaol, or house of correction. 27 *G. II. c. 3.*

The gaoler's fees for persons acquitted of felony, or discharged by proclamation. 14 *G. III. c. 20.*

Charges of prosecuting and convicting felons. 25 *G. II. c. 36.*

Charges of prosecuting and convicting persons plundering shipwrecked goods. 26 *G. II. c. 19.*

Charges of maintaining the militia-men's families, by the several militia acts.

Charges for bringing insolvent debtors to the assizes, in order to their discharge, if themselves are not able to pay. 32 *G. II. c. 28.*

The charges of transporting felons, or conveying them
to

to the places of labour and confinement. 6 G. I. c. 23.
19 G. III. c. 74.

Charges of carrying parish-apprentices, bound to the sea-service, to the port to which the master belongeth.
2 and 3 An. c. 6.

County rates are to be collected on parishes, or divisions, and not on individuals; and though the number of inhabitants, and the value of the lands and tenements in a parish, should increase ever so much, that parish shall not be rated more, as in the following case: *H. 22 G. III. K. v. Inhabitants of St. Paul, Covent Garden*. This was an appeal against the general county-rate, made at the quarter-sessions for the county of *Middlesex*; which rate was confirmed at the next general sessions, and the following case stated: That the parish of *St. Paul, Covent Garden*, in the County of *Middlesex*, was assessed 69*l.* 5*s.* 7½*d.* as their proportion towards the general rate, though the annual rents, or value of the lands and tenements therein assessed to the poor's rate do not amount to 32,000*l.*; and that the parish of *St. Mary le-bone*, in the said county, was assessed to the same county-rate 7*l.* 5*s.* 10*d.* only, though the annual rents, or value of the lands and tenements in that parish, charged with the poor's rate, amounted to 140,000*l.* or thereabouts; wherefore the petitioners conceived the said county-rate to be unequal. Upon hearing the appeal, it appeared to the court, that the allegations contained in the said petition and appeal were true; but the court conceiving that they were not authorised by 12 G. II. or any other law, to vary the proportions of the county-rate, as it has continued in its present form since the year 1739, dismissed the said appeal. After hearing counsel on both sides, Lord *Mansfield* said, There is great hardship in this case; but the point is settled by the authority in *Parker's Reports*, 74, and we can give no relief. The divisions of the land-tax were settled in 1694. By the increase of the metropolis it happened, that a great quantity of the land in *Westminster* has since been built upon; but the act having laid the tax upon the division is no further liable than before. In this case indeed the subject is different, but the reason is the same in both. By this act, county-rates are to be collected in the same manner as rates have been usually collected in the several districts; upon parishes *eo nomine*, and not upon individuals. We have no authority to alter this proportion, notwithstanding the change of circumstances,
and

and though convinced that the equity of the case is with the appellants. *Willes, A/burst, and Buller*, justices, concurring, rule discharged, and the former order of sessions, confirming the former order of session, confirmed. *Caldecott's Rep.* 158.

Church-
wardens to
pay the
sum assess-
ed on their
respective
parishes.

By the 12 G. II c. 29. The church-wardens and overseers shall, in thirty days after demand made, out of the money collected for the relief of the poor, pay the sums so assessed on each parish or place. And if they shall neglect or refuse so to pay, the high constable shall levy the same by distress and sale of their goods, by warrant of two or more justices residing in or near such parish or place.—Where there is no poor rate, the justices, in their general or quarter sessions, shall by their order direct the sum assessed on such parish, township, or place, to be rated and levied by the petty constable, or other peace officer, as money for the relief of the poor is by law to be rated or levied.—The high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid, shall be deemed the public stock.—And the said high constables shall deliver in a true account on oath (if required) of the money by them received, before the said justices at their general or quarter-sessions.—The treasurer shall pay so much of the money in his hands, to such persons as the justices in sessions shall by their order from time to time appoint, for any uses and purposes to which the public stock of any county, city, division, or liberty, is or shall be applicable.—And shall deliver in a true account, on oath if required, of his receipts and disbursements, to the justices at every general or quarter-sessions, and also the proper vouchers for the same, to be kept amongst the records of the sessions.—And the discharge of the said justices, by their order at their general or quarter sessions, shall be a sufficient discharge to the treasurer.—And no new rate shall be made, until it appear by the treasurer's accounts, or otherwise, that three-fourths of the money collected have been expended for the purposes aforesaid. If the churchwardens and overseers of any parish or place shall think such parish or place is over-rated, they may appeal to the next general or quarter sessions.

A town
erected in-
to a county

A county rate may be levied for a town erected into a county of itself by charter many years ago, although no such rate has ever been levied before. This was determined

Curates.

457

mined in the case of *James v. Green*, and others, *E. 35 G. III.* See 6 *Durnf. & East.* 228.

CURATES.

BY the 12 *Anne*, *f. 2. c. 12*, the bishop or ordinary, having regard to the greatness of the cure, and the value of the benefice, was, on or before the granting the licence to the curate, to appoint, by writing, under his hand and seal, a sufficient stipend or allowance, not exceeding fifty pounds, nor less than twenty pounds per annum, to be paid by the rector or vicar to such curate.

And by 36 *G. III. c. 183*, it is further provided, that the bishop or ordinary may appoint under his hand and seal any stipend or allowance for any curate not exceeding 75*l.* per annum, *over and besides, on livings where the rector or vicar does not personally reside four months in the year at least*, together with the use of the rectory or vicarage house, and the garden and stable thereunto belonging, such use to be granted to the curate for twelve calendar months, with power in the bishop or ordinary to renew the grant from time to time, or a further sum not exceeding 15*l.* per annum, in lieu of such house, garden, and stable, in case there shall be none, or it shall appear to the bishop or ordinary not to be convenient to allot the same to such curate; but the said house, garden, and stable, shall be for the use of the curate and his family only during his actual residence in the rectory and vicarage house.

And the bishop and ordinary shall have power, at any time, under his hand and seal, to revoke the grant of the said house, garden, and stable; and also to insert in such grant such terms as he shall think reasonable; and in case the curate shall refuse to deliver up the possession, he shall forfeit to the rector or vicar his stipend then unpaid, or thereafter to become due, and also 50*l.*

Also the bishop or ordinary may appoint a stipend or allowance for the officiating curate employed by any perpetual curate, not exceeding 75*l.* per annum, in like manner as for the curates of rectors and vicars.

Also the ordinary may license any curate actually employed by the rector, vicar, or incumbent, although no express nomination shall have been made by the rector, vicar, or incumbent; and the ordinary may also revoke any licence and remove the curate for reasonable cause; subject, nevertheless, to an appeal to the archbishop of the province.

DAIRIES

36 G. III. c. 117. *An Act to exempt Dairies and Rooms used solely for making, keeping, and drying Cheese and Butter, from the Duties on Windows and Lights.—*
[18th May, 1796.]

Duties on windows was not to be charged on places used solely for drying, keeping, or making cheese or butter.

BY 36 G. III. c. 117, it is enacted that from and after the fifth day of April, 1796, it shall not be lawful to assess or charge any windows or lights in any Dairies, or in any rooms or places kept and used for the sole purpose of drying and keeping cheese, or of making cheese or butter, and to or for no other purpose whatsoever; which Dairies and rooms shall be belonging to and occupied with any dwelling-house chargeable with the rates and duties laid upon windows and lights, whether the same shall be attached to, or detached from, and being part of, such dwelling-house or not, and which shall be occupied by any person who shall sell, or be concerned in selling, the produce of Dairies, or any kind of cheese. *f. 1.*

Exemption to extend only to windows without lasses

Provided, that the exemptions herein before provided shall extend only to such windows or lights in such Dairies or rooms as aforesaid as shall be made with splines or wooden laths, or iron bars, and wholly without glass; and to such Dairies or rooms, which shall not be at any time used to dwell or to sleep in by any person whomsoever, but solely kept and used for the several purposes aforesaid. *f. 2.*

Certain words to be painted on the doors.

Provided also, that the respective owner of the dwelling-houses to which such Dairies or rooms used as aforesaid belong, shall paint or cause to be painted on the door thereof, in large Roman black letter, of two inches at the least in height, and of a proportionable breadth, the words DAIRY AND CHEESE ROOM, or some of them, as the case shall require, and preserve such words so painted distinctly legible, during such time as such Dairies and rooms shall be used for the purposes aforesaid, otherwise, and in case of failure, of any of the orders and regulations in this act contained, such Dairies and rooms shall be charged with all the duties and rates to which the same were liable previous to the passing this act. *f. 3.*

DEER STEALING.

BY 42 G. III. c. 107, it is enacted, that if any person shall wilfully course or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any red or fallow deer kept in any inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground, without the consent of the owner, or shall be aiding or abetting therein, he shall be deemed guilty of felony, and transported for seven years. *f. 1.*

And if any person shall commit any of the said offences in uninclused ground, he shall forfeit the sum of 50*l.* And if the offender shall be a keeper, or entrusted with the care of such deer, he shall forfeit double. *f. 2.*

And the provisions of 16 G. III. c. 30, entitled an act more effectually to prevent the stealing of deer, shall be extended to this act. And in default of payment of penalties, offenders may be committed to gaol for six months. *f. 3.*

Persons committed for a second offence, punishable by a pecuniary penalty, shall be adjudged to be felons, and transported for seven years. *f. 4.*

So much of the 16 G. III. c. 30, as inflicts penalties for hunting or shooting deer, &c. repealed by this act. *f. 6.*

Dogs.

BY 38 G. III. c. 41. *f. 2.*, there shall be paid the following rates and duties for every dog of the several descriptions herein-after mentioned, kept by or for the use of any person.

By the 38 G. III. c. 41. *f. 2.*, there shall be paid for every greyhound, hound, pointer, setting dog, spaniel, lurcher, or tarrier; and for every dog of whatever description or denomination the same may be, where any person shall keep two or more dogs, 6*s.* and by 42 G. III. c. 37, 4*s.* more. Total 10*s.*

For any dog (not being a greyhound, hound, setting dog, spaniel, lurcher, or tarrier) kept by or for the use of any person inhabiting a dwelling-house, assessed to any of the duties on houses, windows, or lights, or on inhabited houses, where one such dog and no more shall be kept by or for the use of such person, 4*s.* and by 41 G. III. c. 37. 2*s.* more. Total 6*s.*

Dogs.

The said duties to be paid by the persons respectively keeping such dogs, or for whose use the same shall be kept.

Stealing
dogs by the
10. G. III.

By the 10 G. III. c. 18. If a person shall steal any dog or dogs, or shall receive or keep any such dog or dogs, knowing the same to have been stolen, every such person shall, on conviction upon the oath of one witness, or his or her own confession, before two justices, forfeit for the first offence any sum not exceeding 30*l.* nor less than 20*l.* as to such justices shall seem meet, together with the charges previous to and attending such conviction; and if not forthwith paid, the said justices shall commit the offender to the common gaol for any time not exceeding twelve calendar months, nor less than six, or until the penalty and charges shall be paid; and for every second offence of the same kind, the offender shall forfeit not exceeding 50*l.* nor less than 30*l.* as to such justices shall seem meet, which said penalties, or any of them, when recovered, shall be paid, half to the informer, and half to the poor: and upon non-payment thereof, such justices shall commit the offender to the house of correction, for any time not exceeding eighteen months, nor less than twelve, or until the penalty and charges shall be paid; and such justices shall also order the offender to be publicly whipped, within three days after such commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock.—One justice, on information to him made, may grant a warrant to search for any dog stolen, or the skin thereof; and the person in whose custody such dog or skin shall be found, shall be liable to the like penalties, as persons convicted of stealing any dog or dogs are herein before made subject to.—If any person shall think himself or herself aggrieved, such person may appeal to the next general quarter sessions, within four days after the cause of complaint shall arise, giving fourteen days notice of his intention to appeal.

Mischiev-
ous dogs to
be muzzled

The owner of a dog is bound to muzzle him, if mischievous, but not otherwise; and if a man keeps a dog that is known to bite cattle, &c. if, after notice given to him of it, his dog shall do any hurt, the master shall answer for it.

In the case of *Smith and Pelah*, H. 20 G. II. the chief justice ruled, that if a dog has once bit a man, and the owner having notice thereof, keeps the dog, and lets him

go about, or lie at his door, an action will lie against him at the suit of the person who is bit, though it happened by such person's treading on the dog's toes; for it was occasioned by his not hanging the dog on the first notice, and the safety of the king's subjects ought not afterwards to be endangered. *Str.* 1264.

In order to maintain an action for biting by the defendant's dog, it must also be proved that he *knew* his dog to be used to bite; but, in that case, one instance is sufficient. *12 Mod.* 555.

If a man has a dog that kills sheep, this is not a public ^{Killing} nuisance; but the owner of the dog, ^{sheep-} *knowing thereof*, is liable to an action, but not otherwise. And in an action upon the case for such killing, the plaintiff shall be required to prove in evidence, that the dog had been used to kill sheep. *Dyer*, 75. *Hut.* 171.

And if a man keeps a dog accustomed to bite sheep, ^{Biting a} and, he knowing it, still keeps the dog, and afterwards ^{horse.} the dog bites a *horse*, this shall be actionable, though he had been known before to bite sheep only; because the owner, after notice of the first mischief, ought to have destroyed him, or hindered him from doing any more damage. *L. Raym.* 110.

If a dog, particularly a greyhound, mastiff, spaniel, or rumbler, (*Cro. Eliz.* 125.) go astray, and be detained by the finder, after demand made, an action will lie for the recovery of him. *Black. Rep.* 1117.

If another man's dog falls upon mine to worry him, I am not justified in killing him, unless there be danger of his materially injuring my dog, and I cannot save him in any other way. *3 Salk.* 139.

K. v. Tolley, *E.* 43. *G. III.* A conviction on the 4th ^{Keeping a} section of the stat. *5 Ann. c.* 14, for keeping a dog and ^{dog and} gun to kill game, without being qualified, must be made ^{gun.} within three months after the offence committed: and if the hearing of the matter be adjourned over that time, though with the consent of the defendant, a conviction afterwards is bad. *3 East's Rep.* 467.

FISH.

ANY person may erect a fish-pond without licence; Any one because it is a matter of profit, and for the increase of ^{may erect a} fish pond. ^{fish pond.} victuals. *2 Inst.* 199.

Respecting the right and property of fish, it has been ^{Of the right} held, that where the lord of the manor has the soil on ^{and proper-} ^{ty of fish.} both

both sides of the river, it is good evidence that he has the right of fishing; but where the river ebbs and flows, and is an arm of the sea, there it is common to all, and he who claims a privilege to himself must prove it. In the *Severn*, the soil belongs to the owners of the land, on each side; and the soil of the river *Thames* is in the king, &c. but the fishing is common to all. 1 *Mod.* 105. *Burr.* 2184.

When private property.

He who is the owner of the soil of a private river has *separalis piscaria*; and he who has *libera piscaria* has a property in the fish, and may bring a possessory action for them; but *communis piscaria* is like the case of all other commons. 2 *Salk.* 637.

Three years imprisonment and fine for trespassing in ponds.

And by 3 *Ed. I. c.* 20. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass; and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof), and then shall find good surety that after they shall not commit the like trespass: and if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and, if they cannot find like surety, they shall abjure the realm. If none sue within the year and day, the king shall have suit.

Trespassers in ponds are those who endeavour to take fish therein. 2 *Inst.* 200.

Fishing between six in the morning and six in the evening.

By the 31 *H. VIII. c.* 2. *f.* 2. If any evil-disposed persons shall fish in the day-time, from six o'clock in the morning till six in the evening, in any ponds, *stews*, or *motes*, with *nets*, *books*, or *bait*, against the will of the owners, they shall, on conviction thereof, at the suit of the king, or the party grieved, suffer imprisonment for three months, and find security for their good abearing.

Three months imprisonment and treble damages.

And by the 5 *Eliz. c.* 21. Any person who shall unlawfully break, cut, or destroy any head or dam of a fish-pond, or wrongfully fish therein, with intent to take or kill fish, shall, on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages, and after the expiration of the three months shall find sureties for his good abearing for seven years, or remain in prison till he doth. *f.* 2. 6.

Treble damages and 20s. to the poor, by 22

By the 22 and 23 *C. II. c.* 25. If any person shall use any net, angle, hair, noose, troll, or spear; or shall lay any wears, pots, fish-hooks, or other engines; or shall take

take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, moat, or other water, *without the consent of the lord or owner of the water*, and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender, in taking or killing fish, shall give to the party injured such recompence, and in such time, as the justice shall appoint, not exceeding treble damages; and shall also pay to the overseers for the use of the poor, such sum, not exceeding 10s. as the justice shall think meet; to be levied by distress; and for want of distress, to be committed to the house of correction for any time not exceeding one month, unless he enter into bond with one surety to the party injured, for not exceeding 10s. never to offend again in like manner. *f. 7.*

And by the same statute, *f. 8.* The justice may take, cut, and destroy, all such angles, spears, hairs, nooses, trols, wears, pots, fish-hooks, nets, or other engines, wherewith such offender shall be apprehended. And the justice may destroy the angles, spears, &c.

Any person who shall think himself aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery, be therein concerned. *f. 9.*

In the case of *K. v. Mallison, M. 32 G. II.* A conviction for taking and killing fish, not setting forth that the defendant had *not the consent of the owner*, was adjudged bad. For, by the court, The offence provided against by this act is *stealing fish*; that is, taking them without the *consent* of the owner. But the man here is not convicted of any offence, for he is not charged with stealing, nor even with taking and killing the fish of another person, or in another person's pond. It may be his own pond, and the fish may be his own, for any thing that is stated to the contrary. The conviction was therefore quashed. *Burr. Manf. 679.*

The King v. Edwards, Hill, 41 G. III. A conviction on the statute, 5 G. III. c. 14, for fishing without the consent of the owner, "In a part of a certain stream which runneth between B, in the parish of A, in the county of W, and C. in the same parish and county," quashed; because it did not appear that the intermediate course of the stream between the two *termini* in which the offence was alledged to be committed was in the county of W, and within the jurisdiction of the convicting magistrate. *1 East's Rep. 278.* Conviction not explicit.

King,

A conviction not properly properly

King v. Stott, Tr. 41 G. III. If a conviction before a justice of the peace, on the game laws, state that the defendant was present at the trial when the information was read, and the witnesses examined; and that when called on for his defence, he produced no evidence, and did not require any for the trial; that is sufficient, without stating that he was previously *summoned* to answer, &c. 1 *Engl's Rep.* 689.

Indictment should ascertain the quantity.

K. v. John Gilbert, Tr. 41 G. III. The indictment charged that the defendant on, &c. did engross and get into his hands by buying of and from divers persons unknown, *a great quantity of fish, geese, and ducks*, to the intent to sell the same again; and being removed by *cartonari* into the King's Bench, the defendant demurred generally; and objected, among other matters, that no quantity was specified of the several articles charged to be engrossed. The court adjudged that this form of indictment is bad: it includes several things, as fish, geese, and ducks, without ascertaining the quantity of each. 1 *Engl's Rep.* 583.

Nets and other engines to be seized.

By the 4 and 5 *IV. c. 23.* No person shall have or keep any net, angle, leap, piche, or other engine for the taking of fish, other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorised in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may seize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And any person, authorised by a justice's warrant, may, in the day-time, search the houses, out-houses, and other places of any person hereby prohibited to have or keep the same, who shall be suspected to have in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut and destroy the same, as things prohibited by this act to be kept by persons of their degree. *f. 5, 6.*

Transportation or pecuniary forfeiture by 5 *G. III.* in a park, paddock,

By the 5 *G. III. c. 14.* If any person shall enter into any park or paddock fenced in, and enclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard, any stream of water shall run,

or wherein shall be any river, stream, pond, pool, moat, ^{orchard,} ^{&c.} stew, or other water, and by any means, or device whatsoever, shall steal, take, kill, or destroy, any fish bred or kept therein, without the consent of the owner thereof, or shall be aiding therein, or shall receive or buy any such fish, knowing them to be so stolen or taken as aforesaid, and shall be convicted thereof at the assizes, within six calendar months after the offence shall be committed, he shall be transported for seven years. And any offender, surrendering himself to a justice, or being apprehended or in custody for such an offence, or on any other account, who shall make confession thereof, and a true discovery on oath of his accomplice or accomplices, so as such accomplice may be apprehended, and shall on trial give evidence so as to convict such accomplice, shall be discharged of the offence so by him confessed. *f. 1, 2.*

K. v. Gordon, H. 9 G. III. The defendant was convicted on the oath of Martha Buxton in the penalty of 5*l.* for fishing with a net in a stream called the *Sobot Brook* and taking, killing, and destroying several fish, against the form of the statute in that case made and provided; the defendant not having any just right or claim to take, kill, or carry away any such fish.—But as it did not appear in the conviction *that it was without the consent of the owner*, it was therefore quashed. *Burr. 2279.*

Conviction quashed for omitting necessary words.

And by the same statute, *f. 3, 4.* If any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or stream, pond, pool, or other water (not in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling-house, but in any other inclosed ground being private property), he shall, on conviction before one justice, on the oath of one witness, forfeit 5*l.* to the owner of the fishery of such river, pond, or other water: and such justice, on complaint upon oath, may issue his warrant to bring the person complained of before him; and if he shall be convicted before such justice, or any other of the county or place, he shall immediately pay the said penalty of 5*l.* to such justice, for the use of the person as the same is hereby appointed to be paid unto; and in default thereof, shall be committed by such justice to the house of correction for any time not exceeding six months, unless the forfeiture shall be sooner paid: or such owner of the fishery may, within six calendar months after the offence, bring an action for the penalty in any of the courts of record at *Westminster*.

Penalty when not in a park, paddock, &c.

Fruit and Fruit-Trees.

But nothing in this act shall extend to subject any persons to the penalties thereof, who shall take, kill, and carry away, any fish in any river or other water wherein such person shall have a right so to do. *f. 5.*

Felony
without be-
nefit of
clergy.

By the 9 *G. I. c. 22*, generally distinguished by the name of the Black Act, if any person being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond, or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein, he shall be guilty of felony without benefit of clergy.

Nets cross a
river.

By 2 *H. VI. c. 15*, no person may fasten nets, &c. across rivers to destroy fish, and disturb the passage of vessels, on pain of *5l.*

Taking, or
exposing to
sale any
spawn, fry,
broad-fish,
or unsize-
able fish.

By the 33 *G. II. c. 27*, no person shall take, or knowingly have in his possession, either in the water or on shore, or sell, or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long, and any person may seize any such, together with the baskets and package, and charge a constable or other peace-officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall also forfeit 20*s.* to be levied by distress, by warrant of such justice; half to the prosecutor, and half to the poor where the offence was committed, (and every inhabitant of such parish may, nevertheless, be a witness) for want of sufficient distress, the offender to be committed to the house of correction, there to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid. Provided that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions.

FRUIT AND FRUIT-TREES.

BY the 37 *H. VIII. c. 6. f. 4*, Any person who shall bark any fruit-tree, shall forfeit to the party grieved treble damages, by action at the common law; and also 10*l.* to the king. And by 43 *Eliz. c. 7. f. 1*, every person who shall rob any orchard or garden, or dig or pull up any fruit-trees, with intent to take the same away (the

same not being felony by the laws of this realm) shall, on conviction before one justice, give to the party such satisfaction for damages as such justice shall appoint, and, in default of payment, to be whipped. And with respect to what shall be deemed *felony by the laws of this realm*, the distinction seems to be, that if they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but trespass only, for a man cannot steal a part of the freehold, but if they be severed from the freehold as wood cut, or apples gathered from the trees, then the taking of them is not a trespass only, but felony.

By 4 G. II. c. 32, robbing orchards or gardens of fruit growing therein, may be punished by fine, whipping, &c. By 1 G. I. c. 48, fine and imprisonment may be inflicted on persons destroying fruit-trees.

GAME.

TO prevent repetitions throughout this title, it may be necessary to premise, that it is enacted by the 8 G. c. 19. That where any person, for any offence against any law in being at the making of the said act, for the better preservation of the game, shall be liable to any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 G. II. c. 2.) by action of debt, or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recovers he shall have double costs. Provided, that the offender shall not be prosecuted both ways; and, in case of a second prosecution, he may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had. And the 2 G. III. c. 19, recites, That whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof the inhabitants of the said parish have been disallowed to give evidence; it is therefore enacted, that it shall be lawful for any person to sue for the whole

* N. B. This inconvenience is obviated by an act of the 27 G. III. whereby parishioners are qualified to be witnesses against offenders, though the penalties be ordered to be applied to the use of the poor.

of such penalty to his own use, and, if he recovers, he shall have double costs, such action to be brought within six months after the offence committed.

Qualifica-
tion.

By the 22 and 23 C. II. c. 15: Every person, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly sum of 100*l.* per annum, or for term of life, or not having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l.* (other than the son or heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens) is hereby declared to be a person by the laws of this realm, not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, setting dogs, ferrets, nets, gins, snares, or other engines for the taking and killing of game.

Lease for
ninety
nine years.

Earl Ferrers v. Henton, E. 40 G. III. This was an action for the penalty on the statute of 5 Au. c. 14, for killing game, not being duly qualified. At the trial at the last Assizes at Leicester the question turned on the Defendant's qualification; as to which it appeared that he was possessed of certain premises of the yearly value of upwards of 150*l.* in his own right, under a lease granted to certain other persons named for 99 years, if he, the defendant, and two others should so long live. *Chambre, B.*, being of opinion, that this was a sufficient qualification for the defendant to kill game, nonsuited the plaintiff. *Vaughan, serjeant*, now moved to set aside the nonsuit, on the ground that the defendant's estate in the premises was not such as the statute requires for this purpose; being neither a lease for life, because the lives might survive the term, nor a lease for 99 years certain, because the lives might drop before. *Lord Kenyon, C. J.* Leases of this kind have already been deemed sufficient to give a qualification. There is no reasonable probability of any life in being extending beyond 99 years: and the legislature in admitting leases for 99 years of a certain value to be a qualification to kill game, did not mean to require that they should positively endure so long; it is sufficient if they may extend to that period, subject as in this case, to the contingency of the party's so long living. By the Court, Rule refused. *Durn. & East, 506.*

Person
swearing
himself not
worth 100*l.*

On a question of qualification of a defendant to kill game, the convicting magistrates may ground their opinion of his not being qualified on the fact of the defendant's

man's having, on a former day, sworn under the income tax act that his estate was less than 100*l.* per annum. *K. v. Clarke, E. 39 G. III. 8. Durnf. & East, 220.* per annum not qualified.

N. B. It seems strange that there is fifty times the property required to enable a man to kill a partridge, as to vote for a knight of the shire. *4. Blackst. 175.*

By the 25 *G. III. c. 50.* and 31 *G. III. c. 21,* it is enacted, That, from July 1, 1785, there shall be paid to his Majesty the following duties: Game licences.

Every person in Great Britain, who shall use any dog, gun, net, or other engine, for the taking or destruction of game, (not acting as gamekeeper) shall deliver in a paper or account in writing, containing his name and place of abode, to the clerk of the peace or his deputy, and annually take out a certificate thereof; and every such certificate shall be charged with a stamp-duty of 2*l.* 2*s.* and an additional 1*l.* *U. by 31 G. III. c. 21.* making in the whole 3*l.* 3*s.*

Every deputation of a gamekeeper shall be registered with the clerk of the peace, and such gamekeeper shall annually take out a certificate thereof; which certificate shall be charged with a stamp duty of 10*s.* 6*d.* and an additional 10*s.* 6*d.* by 31 *G. III. c. 21,* making in the whole 1*l.* 1*s.* Deputation of a gamekeeper to be registered.

The duties to be under the management of the commissioners of the stamp-office.

From and after the 1st of July, 1785, the clerk of the peace shall annually deliver to persons requiring the same, Annual licence. duly stamped, a certificate or licence according to the form therein mentioned, for which he shall be entitled to demand 1*s.* for his trouble; and on refusal or neglect to deliver the same, forfeit 20*l.*

Every certificate to bear the date when issued, and to continue in force until the 1st day of July, then following, on penalty of 20*l.*

After the said 1st of July, 1785, any person that shall use any greyhound, hound, pointer, setting-dog, spaniel, or other dog, or any gun, net, or engine, for taking or killing of game, without a certificate, is liable to the penalty of 20*l.*

From the said 1st of July, 1785, if any gamekeeper shall, for the space of twenty days after the said 1st of July, or if any gamekeeper thereafter to be appointed, shall for the space of twenty days next after such appointment,

pointment, neglect or refuse to register his deputation and take out a certificate thereof, he is liable to the penalty of 20*l*.

This act not to extend to the Royal Family.

The clerks of the peace are to transmit to the stamp-office in London, alphabetical lists of the certificates granted in every year before the first day of August, under the penalty of 20*l*.

The list to be kept at the stamp-office in London, and there to be inspected on payment of 1*s*.

The commissioners of the stamp duties are, once or oftener in every year, as soon as such lists are transmitted to them, to cause the same to be published in the newspapers circulating in each county, or such public paper as they shall think most proper,

If any gamekeeper, who shall have registered his deputation, and taken out a certificate thereof, shall be changed, and a new gamekeeper appointed in his stead, the first certificate is declared to be null and void, and the person acting under the same, after notice, is liable to the penalty of 20*l*.

A person
to produce
his certificate.

Any person in pursuit of game, who shall refuse to produce his certificate, or to tell his name and place of abode, or shall give in any false or fictitious name and place of abode to any person requiring the same, who shall have obtained a certificate, is liable to the penalty of 50*l*.

The certificates are not to authorize persons to kill game at any time prohibited by law, nor to give any person any right to kill game, unless such person shall be qualified so to do by the laws now in being, but shall be liable to the same penalties as if this act had not passed.

The licence
does not
qualify an
unqualified
person.

[So that though by this act qualified and unqualified persons are equally included, yet having a certificate does not give an unqualified person a right to kill game: the point of RIGHT still stands upon the former acts of parliament; and any unqualified person killing game *without a certificate*, is not only liable to the penalty inflicted by this act, but also to all the penalties relating to the killing of game, &c.]

Witnesses refusing to appear on justices's summons, or appearing and refusing to give evidence, forfeit 10*l*.

The certificates obtained under deputations, not to be given in evidence for killing of game by a gamekeeper
out

out of the manor, in respect of which such deputation or appointment was given and made.

Persons counterfeiting stamps are to suffer death as felons.

Penalties exceeding 20*l.* are recoverable before two justices, and may be levied by distress.

By the 26 *G. III. c. 82*, the above penalties go half to the king, and half to the informer, if sued for within six months.

By the 39 and 40 *G. III. c. 50*. Persons to the number of two or more, found in any forest, &c. or open or inclosed ground in the night (*i. e.* between the hours of eight and six in winter, or ten and four in summer) having any gun, &c. with intent to destroy game; and persons aiding with offensive weapons, are punishable as rogues and vagabonds, under statute 17 *G. II. c. 5*. Persons found in a forest at night.

Abstract of the Laws as they now stand, relating to HARES, PARTRIDGES, PHEASANTS, and other Game.

THE penalty for killing in the night a hare, partridge, or pheasant, qualified or unqualified, is 5*l.* General abstract of the game laws.

Any unqualified person exposing to sale a hare, partridge, pheasant, or other game, incurs a penalty of 5*l.*

If any hare, pheasant, partridge, or other game, be found in the shop, house, or possession of any poulterer, salesman, fishmonger, cook, or pastry-cook, or of any person not qualified in his own right to kill game, or entitled thereunto under some person so qualified, it shall be deemed an exposing thereof to sale.

For selling a hare, partridge, pheasant, or other game, qualified or unqualified, 5*l.*

Any unqualified person using tunnels or other engines, to destroy a hare, partridge, pheasant, or other game forfeits 5*l.*

Any unqualified person keeping and using greyhounds, setting dogs, lurchers, tunnels, or other engines to kill or destroy hares, partridges, pheasants, or other game, is liable to 5*l.* penalty. The 5*l.* penalty is either for keeping or using.

By the 39 *G. III. c. 34*. Any person taking, killing, destroying, carrying, selling, buying, or having in his possession, any partridge, between the first of *February*, and the first of *September*, qualified or unqualified, incurs a penalty of 5*l.*

For

Gleaning. Hay and Straw.

qualified person, to see the game pursued or destroyed, provided the unqualified person has no gun or other engine with him for the destruction of the game, without being subject to a penalty.

For the Tax on Dogs, see *Title Dogs*.

GLEANING.

IT hath been said, that by the common law and custom of *England*, the poor are allowed to enter and glean upon another's ground after the harvest, without being guilty of trespass; and that this humane provision seemed borrowed from the *Mosaical* law. 3 *Black.* 212. *Burr.* 1927. But it is now positively settled, by a solemn judgment of the court of Common Pleas, that a right to glean in the harvest-field cannot be claimed by any person at common law: neither have the poor of a parish, legally settled, such a right. *Gould*, justice, dissented from this opinion, quoting the passages in the *Mosaical* law, and 4 *Burr.* 1927; together with the recognition of the custom or privilege in a private act of parliament for an enclosure in Basingstoke-parish. The other judges, however, were of opinion, that it would be dangerous and impolitic to admit gleaning to be a right, and in fact would be prejudicial to the poor themselves, now provided for under various positive statutes. They also remarked, that the custom of gleaning or leasing was various in various places, and was in many cases restricted to particular corn, and could not therefore be set up as an universal common-law right; that it would be opening a tempting door to fraud and idleness, and had never been specifically recognized by any judicial determination, 1 *H. Black. Rep.* 51—63.

HAY AND STRAW.

36 G. III. c. 88. *An Act to regulate the Buying and Selling of Hay and Straw; and for repealing so much of two Acts made in 2 W. & M. and 31 G. II. as relate to the Buying and Selling of Hay and Straw, within the Limits therein mentioned.* [14th May, 1796.]

Preamble. WHEREAS many and great abuses are committed by persons selling Hay and Straw in the city of *London*, and within the bills of mortality, and other places in the vicinity

vicinity thereof: and whereas the laws now in being are not sufficient to prevent the same; it is therefore enacted, That so much of an Act made in 2 W. & M. entitled, *An Act for paving and cleansing the Streets in London and Westminster, and Suburbs and Liberties thereof, and Out Parishes in the County of Middlesex, and in the Borough of Southwark; and other Places within the Bills of Mortality, in the County of Surrey, and for regulating the Markets therein mentioned;* and also so much of an Act, made in 31 G. II. entitled, *An Act to ascertain the Weight of Trusses of Straw, and to punish Deceit in the Sale of Hay and Straw in Trusses, in London, and within the Weekly Bills and the Distance of Thirty Miles thereof: and to prevent Common Salesmen of Hay and Straw from buying the same on their own Account, to sell again: and also to restrain Salesmen, Brokers, or Factors in Cattle, from buying on their own Account, to sell again, any live Cattle in London, or within the Weekly Bills, or which are driving up thereto,* as relates to Hay and Straw, shall, from the Twenty-fourth day of June, 1796, be repealed. *f. 1.*

And it is further enacted, That no Hay or Straw shall be sold in any market or place within the cities of London and Westminster, or the weekly bill of mortality, or within thirty miles thereof, other than what is made up in bundles or trusses; and if any person shall sell any Hay or Straw, except in bundles or trusses, within the limits aforesaid, and be convicted thereof, he shall for every such offence forfeit 20s. *f. 2.*

And each bundle or truss of Hay sold in any such market, between August 31 in any year and June 1 in the succeeding year, shall be of the full weight of 56 pounds; and every truss of Hay sold between June 1, and August 31, in any year, being new Hay of the summer's growth of that year, shall contain the full weight of 60 pounds, and being old Hay of any former year's growth, the weight of 56 pounds, as aforesaid; and each truss of Straw shall contain the full weight of 36 pounds; and every load of Hay or Straw shall contain thirty six trusses; and if any Hay shall be sold whereof any truss shall be of less weight than aforesaid, every person so selling shall forfeit for every such truss of Hay, not being the weight aforesaid, not exceeding 5s. nor less than 2s. 6d. and for every such truss of Straw 1s. but no person shall be convicted in the penalty aforesaid, for selling any truss of Hay or Straw deficient in weight, where a load or any

So much of
2 W. & M.
sess. 2.
cap. 9.

and 31 G.
II. c. 40, as
relates to
Hay and
Straw, re-
pealed.

No Hay or
Straw to be
sold within
certain li-
mits but in
trusses.

Weight of
trusses.

Penalty for
selling
trusses
short of
weight.

less quantity is sold at the same time to the same person, if the number of trusses so sold shall amount upon the whole to the average weight required. *f. 3.*

Penalty for selling new Hay for old Every person who shall sell, between *June 1,* and *December 31,* in any year, any Hay of the growth of that year for Hay of the growth of any former year, shall forfeit for each truss so sold, *2s. 6d.* *f. 4.*

Hay or Straw to be of one quality. Every load, bundle, or truss of Hay or Straw, which shall be sold, shall be made up with such Hay or Straw only as it appears to be by the outside: and such Hay or Straw only, shall be deemed to be the Hay or Straw which is to make up the weight of every truss; and every

Penalty for selling it mixed. person who shall sell any load, bundle, or truss of Hay or Straw, which shall in the inside thereof be of inferior goodness from what the outside shall appear to be, shall forfeit not exceeding *5s.* nor less than *2s. 6d.* for every truss of Hay, and *1s.* for every truss of Straw. *f. 5.*

Selling Hay with bands exceeding 5lb. weight And the pair of bands with which any truss of Hay shall be bound shall not exceed the weight of five pounds; upon pain that the offender shall for every such offence forfeit *1s.* and also the further sum of one shilling for each pound weight that every such pair of bands shall weigh above five pounds. *f. 6.*

Penalty on persons binding Hay or Straw. If any person employed to bind Hay or Straw, shall not make the same into trusses of such weight as herein directed, he shall pay six-pence for every truss not being of such weight. *f. 7.*

Salesmen buying and selling on their own account Hay or Straw, or Grass. No common salesman, factor, or agent, within the limits aforesaid, shall buy and sell, on his own account, or of any person or persons in trust for him, any Hay or Straw, or any grass of any kind, growing or making into Hay, on pain of forfeiting for each fifty-six pounds weight of Hay so bought and sold *5s.* and for each thirty-six pounds weight of Straw so bought and sold *2s.* and also for each acre of such Grass growing or making into Hay, so bought and sold, a sum not exceeding *5s.* nor less than *50s.* *f. 8.*

Salesman to send to the owner an account of the place, time, and price of Hay, &c. Every common salesman, factor, or agent, for the sale of Hay or Straw, shall, within seven days after the sale of every load or other quantity of Hay or Straw, send to the person on whose account it shall have been sold, a true account under his hand, of the place where, time when, and the price for which it was sold, and the name and place of abode of the purchasers, on pain of forfeiting for every neglect not exceeding *20s.* nor less than *10s.* *f. 9.*

It is further enacted, That in every market for the sale of Hay or Straw, there shall be kept a public book or register for entering and registering therein an account of all Hay and Straw which shall be, from time to time, sold in any such market; and that for the city of London, such book shall be kept by the clerk or toll gatherer, appointed by the Lord Mayor, &c. and that for every other such market within the city of Westminster and limits aforesaid, such book shall be kept by the clerk or toll-gatherer appointed within their several jurisdictions, and that before six o'clock in the evening on the day of the sale of any Hay or Straw, exceeding four trusses in one quantity, within the cities or limits aforesaid in any market, and within seven days after any such sale in the said cities and limits out of any market, there shall be made by the seller thereof, a true entry in the book of the market in which such Hay or Straw shall be sold, or where it shall be sold out of any market, in the book of the market nearest to the place of sale, distinguishing the true names and places of abode of the persons so selling, and for whom sold, and by whom and on whose account it shall have been bought, and the place where sold, and the true price paid or agreed to be paid for the same, which entry shall be subscribed by each seller of Hay or Straw, for which entry shall be paid to the keeper of the book one penny; and that every such book shall be kept at some convenient place in every such market, and shall at all times between the hours of nine in the morning and six in the evening of each day (*Sunday* excepted) be opened for the inspection of every person on paying for every such inspection one penny; and if any seller of Hay or Straw shall omit to make the proper entry, or the keeper of any book for the purposes aforesaid, shall knowingly suffer any untrue entry to be made or signed therein, or shall refuse to permit such book to be inspected by any person applying and tendering the fee for such inspection, every such seller of Hay or Straw, or keeper of such book, so offending, shall on conviction for every such offence forfeit not exceeding 5*l.* nor less than 10*s.* *§. 10.*

Provided also, That nothing in this act shall oblige any person to register any Hay or Straw which he shall deliver on special contract or agreement, but such only which shall be sent to any market to be there sold, and which shall be accordingly there sold, shall be registered as before is directed. *§. 11.*

No

Hay and Straw.

Clerk or
toll-gatherer
buying or
selling Hay
or Straw.

No clerk or toll gatherer, or his deputy, shall buy or sell, or be concerned in the buying or selling of Hay or Straw, under the penalty of 2s. 6d. for every truss of Hay so bought or sold by him, or in the buying or selling of which he shall be so concerned, and of one shilling for every such truss of Straw. *s. 12.*

Scales and
weights to
be kept at
the clerk of
the market's
office, and at
the parish
watch-
house.

And there shall be provided by every clerk or toll-gatherer, and kept at the office of the clerk of every Hay market, as also at the watch-house of each parish, by the churchwardens and overseers of such parishes respectively, proper scales and weights, or engines for the weighing all Hay and Straw which shall be required to be weighed; and such clerk or toll-gatherer, or his deputy, and the constable or headborough of the parish or place where such scales, weights, and engines shall be kept, are hereby appointed Hay Weighers within their respective parishes and places; and if any doubt shall at any time arise, whether any Hay or Straw is not of the weight it ought to be, it shall be lawful for the buyer thereof, his servant or agent, on the delivery of any such Hay or Straw at the abode, or loft of the buyer, or other place where it shall be agreed by the seller to be delivered, to cause it to be weighed in the presence of the seller, or his servant or agent; and if, on its being so weighed, the buyer or seller shall be dissatisfied with any such weighing, it shall be lawful for any such buyer, if the Hay be delivered within a parish where there is any hay market, with all convenient speed, to apply to the clerk or toll gatherer of such market, and if the Hay be delivered in any other parish within the cities or limits aforesaid, to apply to the hay weigher nearest to the place where any such Hay or Straw shall be delivered, to weigh the same, and on any such application being made, such clerk or toll gatherer, or other hay weigher who shall be applied to, shall with all convenient speed come to the place where such Hay or Straw shall be within the limits aforesaid, and there weigh such as shall be complained of, and the weight thereof, which shall be ascertained by any such clerk or toll gatherer, or other hay weigher, shall be conclusive to all parties; but if the clerk or toll gatherer of any market shall not, upon such application come with all convenient speed to the place where such Hay or Straw shall be delivered, it shall be lawful for the buyer to apply for the purposes aforesaid to such other hay weigher as shall be nearest to the place where any such shall be delivered, and

Hay
weighers.

Buyer of
Hay or
Straw may
cause it to
be weighed
on delivery

Directions
for weigh-
ing it in
case of dis-
satisfaction.

and the person who shall require any such clerk or toll gatherer, or other hay weigher, to attend and weigh any such Hay or Straw, shall pay or tender to such hay weigher 3s. for a load, or in proportion for a greater or less quantity, before he shall be obliged to go to weigh any such Hay or Straw; and if the Hay or Straw so weighed shall not be of the weight it ought to be, then the sum so paid shall be forthwith repaid to him by the seller; and if any clerk or toll gatherer, churchwarden or overseers within the limits aforesaid, shall omit to provide and keep proper scales and weights, or engines for the weighing of Hay or Straw, or if any clerk, or toll gatherer, or other hay weigher, shall neglect or refuse to weigh any Hay or Straw when required, at any seasonable time in the day, and so as the sum aforesaid shall have been paid or tendered, every such person shall for every such offence forfeit not exceeding 5*l.* nor less than 10*s.* *f.* 13.

Penalty for not providing scales & weights or for neglecting to weigh.

Provided, That no person shall incur any penalty for selling any Hay or Straw of less weight or worse quality than it ought to be, unless it shall be weighed at or before the delivery, with the privity of the buyer, his servant or agent, or complained of in respect of the quality at the time and place at which it shall be agreed to be delivered by the seller, in the presence of such seller, his servant or agent, unless such seller, his servant or agent, on request made, or on notice given to him to attend and see such Hay or Straw so weighed, shall refuse or neglect to attend to see it so weighed. *f.* 14.

No penalty to be incurred for selling Hay or Straw, unless weighed at or before delivery, &c.

The markets for sale of Hay and Straw, shall end at three in the afternoon of every market day between *Lady Day* and *Michaelmas*, and at two in the afternoon of every market day between *Michaelmas* and *Lady Day*, and notices thereof shall be given by the clerk or toll gatherer, in the several markets, by ringing on the usual market days a large hand bell round each respective market, one hour before the expiration of the times above-mentioned, and again at the expiration of the hours above-mentioned, on pain of forfeiting for every such offence not exceeding 10*s.* nor less than 5*s.* and every person who shall sell any Hay or Straw after the hours aforesaid, shall forfeit for every truss of Hay six-pence, and for every truss of Straw three-pence. *f.* 15.

Hours at which markets shall end, of which notice shall be given.

Penalty for selling after market hours.

If any person having the care and direction of any Haycarts waggon, wain, or cart, used for the purpose of bringing Hay

Hay

Hay and Straw.

in markets
after cer-
tain hours.

Hay or Straw, shall suffer it to remain in any market on the usual market days from *Lady Day* to *Michaelmas*, after five in the afternoon, and from *Michaelmas* to *Lady Day* after three in the afternoon, he shall forfeit for every such waggon, &c. not exceeding 20s. nor less than 5s. *f. 16.*

Permitting
horses
drawing
Hay or
Straw to
remain in a
market.

And if any person having the care or direction of any waggon, wain, or cart, in any such market as aforesaid, shall permit the horse or horses drawing the same to feed and remain in any such market for fifteen minutes, during the hours allowed for sale of Hay or Straw, under any pretence whatsoever, he shall for every such offence forfeit not exceeding 20s. nor less than 5s. *f. 17.*

Penalty for
buying and
selling
again Hay
or Straw.

No person shall buy and sell again any Hay or Straw, that may be conveying by land or water carriage for the purpose of selling within the limits aforesaid, under the penalty of forfeiting 5s. and no person shall buy any Hay or Straw in any market, for the purpose of selling again in any such market; and every person so offending shall, for every truss so bought, forfeit 5s.: Provided, that no person selling Hay or Straw by retail at their own premises, in any less quantity than five trusses, shall be liable to such last mentioned penalty. *f. 18.*

Penalty for
charging
more than
actually
paid

Delivering
other than
the com-
modity
sold.

Penalty for
fraudulently
increas-
ing weight.

If any person, after having purchased for any person, any Hay or Straw, shall charge or demand more than was truly paid for the same, he shall forfeit 5s. for every truss of Hay so purchased, sent in, or delivered. *f. 19.*

If any person shall sell any quantity of Hay or Straw, and afterwards in lieu thereof, send in any other Hay or Straw, he shall forfeit 2s. for every truss of Hay, and 1s. for every truss of Straw so sent in or delivered. *f. 20.*

If any person shall fraudulently mix, or put, any water, sand, earth, or other thing, in any truss of Hay or Straw, to increase the weight, and shall afterwards sell, send in, and deliver the same, or any part; or if any person shall sell any quantity of Hay or Straw, and shall afterwards mix, or put, in the trusses of such Hay or Straw, water, sand, earth, or any other thing, to increase the weight, and shall afterwards send in, or deliver to the buyer thereof, any such Hay or Straw, every person so offending shall forfeit 10s. for every truss of Hay, and 5s. for every truss of Straw so sent in or delivered, or tendered as aforesaid. *f. 21.*

Penalty for
delivering

And it is further enacted, That if any person selling any Hay or Straw, in any market, &c. aforesaid, shall deliver

deliver to, or tender for, or on account of, the buyer ^{less than} thereof, a less number of trusses for the true number ^{the number} bought and sold, or if the driver of the waggon, &c. ^{of trusses} in which such Hay or Straw shall be, for the purpose of ^{sold.} being delivered according to such sale, shall secrete, or keep back, any part thereof, or shall deliver a less number of trusses to the buyer, such driver or person selling, knowing the same so delivered not to be the true number bought, or which ought to be delivered according to such sale, every driver or person selling so offending, shall forfeit 5*l.* for every truss of Hay or Straw so secreted, kept back, or not delivered; and in default of immediate payment, by any such driver, on conviction before any justice in whose jurisdiction the offence shall have been committed, such driver or person selling, shall be forthwith sent, by such justice, to the house of correction, or other prison, there to remain and to be kept to hard labour, without bail or mainprize, for not exceeding three months, nor less than one, unless the penalty should be sooner paid. *f.* 22.

If any person, after having bought or received any Hay or Straw for sale, or exposed any Hay or Straw to ^{Penalty for} sale on a market day, in any market, which shall not be ^{not bring-} sold, shall thereupon lodge the same in any place near to ^{ing Hay or} such market as aforesaid, and shall not, if the same be not ^{Straw, ex-} before that time sold, bring and expose it for sale in such ^{posed and} market, by eleven in the forenoon of the next ensuing ^{not sold, to} market day, or if any person lodging any Hay or Straw ^{the market} as aforesaid, which shall be brought to any place for sale ^{on the en-} on a bye day or a day between the usual market days, shall ^{suuing mar-} not, if the same be not before that time sold, bring and ^{ket day,} expose all such Hay or Straw for sale in such market near ^{&c.} to where the same was lodged, on the following market day by the same hour as aforesaid, or as soon after as the weather will permit without endangering the spoiling or injuring the same, every person so offending shall forfeit for every such offence not exceeding 5*l.* nor less than 40*s.* *f.* 23.

If any person who shall have been concerned in buying ^{Penalty for} or selling Hay or Straw, shall give, take, or receive, any ^{giving or} false receipts, of the price of any Hay or Straw so sold ^{receiving} or bought, he shall for every such offence forfeit not ex- ^{false re-} ceeding 10*l.* nor less than 5*l.* upon complaint being made to any justice, &c. at any time within six calendar months after such offence committed, but if such offender in such

cases shall, within six calendar months, give information of and prosecute to conviction any other person so offending, such informer shall be indemnified from such penalty. *§. 24.*

Limitation
of prosecutions

But no person shall be prosecuted for any of the before-mentioned offences, except herein otherwise expressed, unless information be given within fourteen days after the commission of such offence. *§. 25.*

Recovery of
forfeitures.

And it is further enacted, That on complaint or information being made to any justice of any offence committed against this act, such justice is hereby required to summon the person charged with any such offence, and also any witness or witnesses for the same, at a certain time and place in such summons to be specified, and in default of appearance of the party so summoned, then every such justice is hereby required to proceed to hear and determine the matter of the said complaint, and to convict the respective offender, and to award the respective penalties imposed by this act to be paid by such offender, with the reasonable costs attending such conviction, to be ascertained and allowed by such justice, and by warrant under his hand and seal, to cause the same to be levied by distress and sale; unless within five days from the day of making such distress, the party offending shall pay the penalty and costs, and also the costs and charges of such distress, rendering the overplus (if any) to the offender; and for want of distress such justice is hereby empowered to issue his warrant for apprehending such offender; and if he shall escape or go out of the jurisdiction of such justice, it shall be lawful for any other justice of the county or place where such offender shall be found, by indorsement of such warrant, to authorize the execution thereof within the jurisdiction of such justice, as well as to convey the offender before the justice who granted such warrant, who may commit him to some public prison or house of correction of the county or place in which such offence shall have been committed, there to remain, without bail or mainprize, for not exceeding three calendar months, nor less than fourteen days, from the time of every such commitment, unless in cases otherwise provided by this act, and unless such offender shall sooner pay the sum to be mentioned on every such warrant; and in all cases where any person shall be brought as a witness touching any matter in this act, by a summons or warrant, before any justice, and shall refuse

Offenders
may be
committed
for want of
distress.

Witnesses
refusing to
be examin-

refuse to be examined, such justice may commit him to some prison of the county or place within the jurisdiction of such justice, for not exceeding fourteen days from the time of commitment. *f. 26.* ed may be committed.

Provided always, That when it shall happen that any Salesmen
 salesman shall be convicted of any offence against this act, convicted of offences,
 and thereby become subject to the payment of any of the may exhibit
 said penalties, he may exhibit his complaint or information complaint
 against the farmer or other person, for whom or on against em-
 whose account he shall have sold any such Hay or Straw, ployers be-
 (on account of which he shall have been so convicted), fore a
 before a justice; and such justice is hereby required to justice.
 summon such farmer or other person, and also any wit-
 nesses, to appear before him, on a day appointed in such
 summons (not less than seven days after the issuing of such
 summons), though such person against whom such infor-
 mation shall be laid, may happen to reside out of the
 county, city, borough, division, or liberty, in which such
 Hay or Straw may have been so sold; and on its being
 made appear to the said justice on oath, that such sum-
 mons was duly served, then every such justice is hereby
 required to proceed to hear and determine the matter of
 the said complaint or information, herein-before directed,
 for hearing of complaints against salesmen; and if it shall
 appear to such justice that such salesman shall not have
 been guilty of or privy to any fraud or deceit in the pre-
 mises, but that such fraud or deceit was imputable to such
 farmer or other person so complained against, then he is
 hereby required to award to such salesman, the amount
 of the penalty so by him paid, with full costs and charges,
 as well those occasioned by the complaint against him, as
 by such subsequent complaint against such farmer or other
 person; such costs and charges to be first ascertained and
 allowed by such justice, and to adjudge the same farmer
 or other person, the owner of the said Hay or Straw, to
 pay the same; and the said justice is required to cause the
 same to be levied as penalties and forfeitures are by this
 act directed to be levied. *f. 27.*

Provided always, That when the party against whom Warrant to
 such warrant of distress shall be granted, shall happen to be indorsed
 reside in another county, &c. out of the jurisdiction of by a justice
 such justice, then such warrant shall not be executed or of the
 put in force until it shall be indorsed by some justice of where the
 the county, &c. to which such summons shall be directed; party re-
 and all and every the justices of such county, &c. are sides.
 hereby

Bay and Straw.

hereby required to indorse the same, on due proof of the hand writing of the justice by whom such warrant was issued, and such warrant, when so indorsed, may be executed as if the same had been originally granted by a justice of that city, &c. in which such farmer or other person shall reside: provided, that every such complaint or information shall be made within fourteen days after the conviction of such salesman as aforesaid; and if it shall appear to the said justice, that such complaint is frivolous, and unfounded, such justice may award all reasonable charges and expences by way of costs, to be paid to the said farmer or other person, provided he shall attend the said summons, as the said justice shall think right, according to the circumstances of the case; such costs to be levied on the salesman so complaining, as herein-before directed. *f. 28.*

Complaint
to be made
within
fourteen
days; and
if frivolous,
the justice
may award
costs to the
employer.

Appeal
may be
made to
quarter
sessions.

But if any person convicted of any offence, shall think himself aggrieved by any such justice, he may appeal to the justices at the general or general quarter sessions to be held next after any such conviction, unless such sessions shall happen to be held within six days next after any such conviction; and if any such quarter session shall happen to be so held within six days next after any such conviction, then it shall be lawful for any such person, at the second general or general quarter sessions, so that the party appearing before any such appeal shall be received, immediately upon such conviction enter into a recognizance with two sureties, before such justice so convicting as aforesaid, in ten pounds each, to appear and prosecute every such appeal with effect; and the justices at such session are hereby required, on every such appeal being made, finally to hear and determine the matter of such appeal, and to make such order, and to award such costs therein, as to them shall seem meet; which said order and determination shall be final to all parties, and no *certiorari* shall be allowed. *f. 29.*

Penalties
to go to the
prosecutor.

The penalties and forfeitures by this act imposed, shall go to the person who shall prosecute to conviction any offender against this act. *f. 30.*

Limitations
of actions.

But no person shall be prosecuted for any thing done in pursuance of this act, after the expiration of six months; and every such prosecution shall be brought in the county or place where such offence shall have been committed; and every person so sued or prosecuted may plead the general issue, not guilty, and if a verdict shall be found for the

General
issue.

the defendant, or if the plaintiff shall become nonsuit, or discontinue his action after the defendant shall have appeared, or if judgment shall be given upon a demurrer against the plaintiff, the defendant shall recover double costs. *f. 31.*

HOPS.

K. v. Waddington, H. 41 G. III. An information was filed against the defendant, containing several counts; the first of which charged, that on the 29th of March 1800, at Worcester, &c. he wickedly intending to advance the price of Hops, did spread rumours and reports, in the hearing of hop-planters, dealers, and others, that the stock of hops was nearly exhausted, and that there would be a scarcity of hops, &c. with intent to induce them not to bring their hops to market for sale for a long time, and thereby greatly to enhance the price.

Endeavouring to enhance the price, by persuading divers dealers, &c. not to take their hops to market, and to abstain from selling for a long time.

For engrossing large quantities of hops, by buying from many particular persons by name, certain quantities, with intent to re-sell the same for an unreasonable profit, and thereby to enhance the price.

For getting into his hands large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to re-sell at an unreasonable profit. And all these counts laid the offence to be in contempt of our Lord the King, and his laws, to the evil example of all others, &c. and against the King's peace.

Upon this information the defendant was convicted before *Le Blanc, J.* at Worcester, and was at length brought up to receive the judgment of the court: when, taking into consideration the nature and extent of the offence, and having respect to the imprisonment the defendant had already suffered, he was adjudged to pay the king a fine of five hundred pounds, and to be further imprisoned for one month, until that fine be paid.

The King v. Waddington. The defendant was also tried before Lord Kenyon, and convicted generally on another indictment, for engrossing hops of divers persons by name, with intent to re-sell at an unreasonable profit, and thereby enhance the price; and engrossing hops, then growing,

Further
fine and
imprison-
ment.

ing, by *beforehand* bargains: for buying all the growth of hops in several parishes by *fore-hand* bargains, with the like intent; and buying hops then growing with an intent to re-sell at an exorbitant price and lucre, to the evil example, &c. and against the peace. The defendant was adjudged for this offence, to pay a further fine to the King of five hundred pounds, and to be further imprisoned for three months, and further till the fine shall be paid. 1 *Eaff's Rep.* 143, 167.

Selling
hops by
sample.

Parkinson v. Lee, E. 42 G. III. Upon a sale of Hops by the sample, with a warranty that the bulk of the commodity answered the sample, the law does not raise an implied warranty that the commodity should be merchantable; though a fair merchantable price were given: and therefore if there be a latent defect then existing in it, unknown to the feller, and without fraud on his part (but arising from the fault of the grower from whom he purchased) such feller is not answerable, though the goods turned out to be unmerchantable. Lord *Ellenborough*, Ch. J. observed, that as he had been concerned in the cause, he had forborne taking any part in the deliberation with the rest of the court, but having now heard their opinions, he declared his entire concurrence with them in the judgment they had delivered. 2 *Eaff's Rep.* 314.

HORSES, MARES, AND GELDINGS.

CLASS I.										
NUMBER THEREOF.										
For 1 horse, mare, or gelding, kept for riding or drawing any carriage chargeable with duty, or hired for a year, or any longer period, and so used - - -		Duties payable by 43 G. III. c. 161. for each.			Additional Duties granted by 45 G. III. c. 13.			Total amount of the Duties to be charged in one sum.		
		£.	s.	d.	£.	s.	d.	£.	s.	d.
		2	0	0	0	8	0	2	8	0
2	Ditto - - -	3	6	0	0	14	0	4	0	0
3	Ditto - - -	3	12	0	0	16	0	4	8	0
4	Ditto - - -	3	15	0	0	16	0	4	11	0
5	Ditto - - -	3	16	0	0	16	0	4	12	0
6	Ditto - - -	4	0	0	0	16	0	4	16	0
7	Ditto - - -	4	1	0	0	17	0	4	18	0
8	Ditto - - -	4	1	0	0	17	0	4	18	0

Horses.

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		£.	s.	d.	£.	s.	d.	£.	s.	d.
9	- - -	4	1	6	0	18	6	5	0	0
10 Ditto	- - -	4	2	0	1	3	0	5	5	0
11 Ditto	- - -	4	2	0	1	3	0	5	5	0
12 Ditto	- - -	4	2	0	1	3	0	5	5	0
13 Ditto	- - -	4	2	6	1	3	0	5	5	6
14 Ditto	- - -	4	2	6	1	3	0	5	5	6
15 Ditto	- - -	4	2	6	1	3	0	5	5	6
16 Ditto	- - -	4	2	6	1	3	0	5	5	6
17 Ditto	- - -	4	3	0	1	3	0	5	6	0
18 Ditto	- - -	4	3	6	1	3	0	5	6	6
19 Ditto	- - -	4	4	0	1	3	0	5	7	0
20 Ditto and upwards		4	5	0	1	3	0	5	8	0

The said duties to be charged annually on the persons using the same, with certain exemptions.

Exemptions from the said Duties.

1. Any person who shall keep any horse for the purpose of husbandry, or of drawing any carriage (except such as are liable to any duty by this act) or carrying burdens in the course of the trade or occupation of the person to whom such horse shall belong, although such horse shall be used for riding on the occasions hereinafter mentioned; that is to say, when returning from any place to which any load or burden shall have been drawn or carried, or in going to any place from whence any load or burden shall be to be brought back, by any such horse, or on account of such horse having been used for the purpose of riding to procure medical assistance, or for the purpose of riding to or from market, or to or from any place of public worship, or to or from any election of members in parliament, or to or from any courts of justice, or to or from any meeting of the commissioners of taxes; provided such horse shall not on any occasion be used for any other purpose save as aforesaid.

2. Any person occupying a farm as tenant at rack rent, the rent of which shall be less than 70*l.* a year, and making a livelihood solely thereby; or any person occupying any estate, or on any other tenure than as tenant at rack-rent solely, or such estate together with a farm at rack-rent, the value of which in the whole shall be less

Horses.

than equivalent to a farm at the rack-rent of 70*l.* a year (reckoning the value of every estate occupied by the owner thereof, or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent) and making a livelihood solely by such his own estate, or by such estate and farm jointly, and using occasionally for the purpose of riding any horse which shall be *bona fide* kept for the purposes of husbandry.

3. Any person occupying a farm, and making a livelihood solely thereby, or any person carrying on a trade, and making a livelihood solely thereby; or making a livelihood by such occupation and trade jointly; or any ecclesiastical person not possessed of an annual income of 100*l.* or upwards, whether arising from any ecclesiastical preferment or otherwise, for one horse, used wholly for the purpose of drawing any carriage with less than four wheels, liable to the duty payable on taxed carts.

CLASS II. HORSES LET TO HIRE.

For every horse, mare, or gelding, let to hire for the purpose of riding, or of drawing any such carriage as aforesaid, for any period of time less than one year, in any manner so that the stamp office duty, payable by law on horses let to hire, shall not be payable, the sum of	Duties payable by 43 G. III. c. 161.	Additional Duty granted by 43 G. III. c. 13.	Total Duty to be charged in one sum.
	£. s. d.	£. s. d.	£. s. d.
	2 0 0	0 8 0	2 8 0

To be charged annually on the person letting the same; but if a due return thereof shall not be made by the hirer, the progressive duty, as set forth in Class I, shall be chargeable on the person who shall have hired the same, together with any other horses used by such person.

Horses:

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CLASS III. HORSES KEPT FOR THE PURPOSE OF RACING OR RUNNING.

For every horse, mare, or gelding, <i>bona fide</i> kept for the purpose of racing or running for any plate, prize, or sum of money, or other thing, or kept in training for any of the said purposes, whether in the stables of the proprietor or of any other person, the sum of	Duties payable by 43 G. III. c. 161.	Additional Duty granted by 45 G. III. c. 18.	Total Duty to be charged in one sum.
	£. s. d.	£. s. d.	£. s. d.
	2 0 0	0 8 0	2 8 0

The said duty to be charged annually on the person having the custody, charge, or management of such horses.

HORSES, MARES, AND GELDINGS, *not charged with any Duty as above-mentioned, and also on MULES.*

CLASS I.

For every horse, mare, or gelding, not chargeable with any duty as aforesaid, and for every mule, except in the cases herein-after mentioned, wherein other duties are made payable, the sum of

£. s. d.

0 12 6

CLASS II. HUSBANDRY HORSES.

Any person occupying a farm at rack-rent, the rent of which shall be less than 20*l.* a year, and making a livelihood solely thereby, or occupying any estate on any other tenure than as tenant at rack-rent solely, or such other estate together with a farm at rack-rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 20*l.* a year, reckoning the value of every estate occupied by the owner thereof,

N

or

L. S. d.

or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent, and making a livelihood solely by such his own estate, or by such estate and farm jointly, and likewise a profit by any trade or employment, and keeping not more than two horses *bona fide* for the purpose of such occupation, shall be charged for each of such two horses, the sum of - - - - -

0 2 6

Any person occupying a farm at rack-rent in Wales or Scotland, the rent of which shall be less than 10*l.* sterling a year, and making a livelihood principally thereby, or occupying any estate on any other tenure than as tenant at rack-rent, or such other estate together with a farm at rack-rent, the value of which in the whole shall be less than equivalent to a farm at the rack-rent of 10*l.* sterling a year, reckoning the value of every estate occupied by the owner thereof, or on any tenure other than as tenant at rack-rent, as equivalent to double the amount of the like farm at rack-rent, and making a livelihood principally thereby, and likewise a profit by any trade or employment, and keeping not more than two horses *bona fide* for the purposes of such occupation, and of such trade or employment jointly, or either of them separately, shall be charged for each of such two horses - - - - -

0 2 6

*Rules for charging the Duties as set forth in
Classes I, II.*

The said duties to be charged annually, and paid by the person keeping or using such horses or mules, and to be payable for every horse and mule which shall not be chargeable with any duty according to the preceding schedules, by virtue of the exemptions therein contained, except as hereinafter is mentioned.

Exemptions from the Duties.

Any person whatever for any horse, mare, or gelding, not being of the height of 13 hands, of 4 inches to each hand,

Horses.

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hand, or which shall not at any time whatever have been used for any purpose of labour, or otherwise.

Exemptions by the two Acts, 43 G. III. c. 161, and 45 G. III. c. 13, from the several Duties as set forth in the several Schedules marked V. and VI.

Case 1. Any horse, mare, or gelding, belonging to his majesty or any of the royal family.

Case 2. Any postmaster, innkeeper, or other person, licensed for that purpose, in respect of any horse let to hire, where the stamp office duty shall be paid on each letting, and which shall not, on any occasion, be used for any other purpose.

Case 3. Any person licensed to keep any public stage coach, in respect of any horse solely used in drawing such stage coach.

Case 4. Any person licensed within London and Westminster to keep any hackney coach, for any horses kept for the purpose of drawing such coach, in respect of the duties in Schedule V. Class I. and for two horses, and no more, kept for the purpose of drawing each coach so licensed in respect of the duties in Schedule VI. Class I.

Case 5. Any dealer in horses assessed to the duties on dealers for any horse, mare, or gelding, kept *bona fide* for sale, and not for any other purpose.

Case 6. Any person, who on account of poverty, shall be discharged from the assessment of his dwelling house, for any horse; provided such person shall not keep more than one, and the same shall not be let to hire.

Case 7. Any rector, vicar, or curate, actually doing duty, and being the regular officiating minister of the parish or place, who shall not be possessed of an income of 60*l.* per annum from ecclesiastical preferment or otherwise, and who shall keep one horse, and no more, for the purpose of riding, or drawing a taxed cart.

Case 8. Any effective officer commanding a volunteer corps, claiming and returning his exemption for such number of horses as he shall have been required to keep for his Majesty's service in such corps.

Case 9. Any field officer, not being commandant, and any adjutant of any volunteer corps, and any person serving in any corps of yeomanry, or volunteer cavalry, or providing a horse for any other person serving in any such corps, who shall be returned in the manner required by law as effective, and as having used any horse for such service on the several days of muster and exercise.

POST

Horses.

POST HORSES.

A Horse, mare, or gelding hired by the mile or stage, to be used in travelling per mile, $1\frac{1}{2}d.$

Horse, mare, or gelding, hired for less than twenty-eight successive days, for drawing on any public road any coach or other carriage used in travelling post, or otherwise (if the distance shall be ascertained) for every mile, $1\frac{1}{2}d.$

Where the distance shall not, at the time of hiring, be ascertained) for each day, $1s. 9d.$

Exemptions.] Horses, used in hackney coaches, where they shall be employed to go no greater distance than ten miles from the city of London or Westminster, or the suburbs thereof.

(25 G. III. c. 51.)

Post-masters, inn-keepers, or other persons letting post horses without a licence, forfeit $10l.$ and keeping more than one inn under one licence, $20l.$

They are to paint *licensed to let post horses* on the fronts of their houses, on pain of $5l.$

And there shall be paid for every horse hired for travelling post, one *penny halfpenny* for every mile such horse shall be hired to travel post.

For every horse hired for a day, or less time, the distance shall be ascertained, one penny halfpenny per mile; and if the distance shall not be ascertained, $1s. 9d.$ for each horse, to be paid by the person by whom the horse shall be hired.

Every licensed person, to paint, on the outside pannel of each door of the chaise, his christian and surname, and place of abode, on pain of $5l.$

And by 42 G. III. c. 100, from January 13, 1803, any horse may be let out to hire for any time not exceeding 28 successive days by any licensed person, and every horse hired for a less time, where the distance shall not be ascertained, *shall be deemed a hiring for the day*, and when the period of hiring shall exceed 28 days it shall be reckoned as for two or more days, and the persons letting to hire, and the persons hiring, shall be liable to the regulations of the recited act.

And the tickets supplied by the Stamp Office to distinguish the cases of horses hired for a day from hirings for two or more days, shall be filled up and delivered to distinguish

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Alfo

Horses.

Also a list of the names and places of abode of licensed persons, shall be transmitted to the Tax Office.

**STEALING, OR BUYING STOLEN OR UNSOUND
HORSES.**

Stealing
horses,
geldings,
or mares.

By the 1 *Ed. VI. c. 12.* No person convicted for feloniously stealing of *horses, geldings, or mares*, shall have the privilege of clergy.

And by the 2 and 3 *Ed. VI.* No person convicted for feloniously stealing a *horse, gelding, or mare*, shall have the privilege of clergy.

Accessaries

And by 31 *Eliz. c. 12. f. 5.* that not only all accessaries before such felony done, but also all accessaries after such felony, shall be deprived and put from all benefit of their clergy, as the principal, by statute heretofore made, is or ought to be.

Reward and
privilege
for convict-
ing an of-
fender.

If a horse be stolen out of the stable, or other curtilage of a dwelling-house, in the night time, it falls under the denomination of *burglary*; if in the day time, it falls under the denomination of *larceny from the house*: and, in either case, there is a reward of 40*l.* for convicting an offender, and the prosecutor is entitled to a certificate, which will exempt him from all parish and ward offices, in the parish and ward where the burglary or larceny is committed, and which may be once assigned over, and will give the same exemption to the assignee, as to the original proprietor. 2 *Burn's Just.* 621. 10 and 11 *W. c. 23.*

Dr. Burn says, that the reason of the doubt, as to the statute of the 1 of *Ed. VI.* not extending to the stealing of a single horse (running wholly in the plural) is obvious; because a penal statute, (and especially where life is concerned) ought not to be extended beyond the express words thereof, but to be taken strictly in favour of the subject. [N. B. The word *bitches* is not mentioned in the 10 *G. III. c. 18.* or the 36 *G. III. c. 124.* imposing a tax on dogs.]

Horse fair
or market.

By the 2 and 3 *P. & M. c. 7.* and 31 *Eliz. c. 11.* the keeper of every fair and market shall yearly appoint a certain special and open place, where horses shall be sold in any fair or market overt.

Toll taken.

And he shall appoint one or more persons to take toll there respectively, and to keep the same place from ten in the forenoon till sun-set,

And

And the sale or exchange of any stolen horse, in any fair or market overt, shall not alter the property, unless such horse shall be, in the time of the said fair or market, openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten o'clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, yard, backside, or other privy or secret place.

Horse to be publicly shewn one hour.

Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper where no toll is due.

Seller and buyer to go together.

Nor unless such toll-taker there, or (where no toll is paid) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the feller, and of his true Christian and surname, and place of abode, and shall enter all such his knowledge in a book to be kept for that purpose; or else that the seller shall bring to the toll-maker, or other officer as aforesaid, one credible person, who shall testify that he knows the seller, and his true name, surname, mystery, and dwelling-place, and there enter the same: and likewise the name, surname, mystery, and dwelling-place of him who so avoucheth his knowledge.

Sale to be entered.

Nor unless he shall also cause to be entered the true Price. and real price.

And the colour, at least one special mark.

Marks.

The buyer shall pay the toll, if any is due; if not, he shall give 1d. for the entry.

Toll.

Which being done, the person who shall enter the same, shall give to the buyer, requiring and paying 2d. for it, a note in writing of all the contents of such entry subscribed with his hand.

Certificate of entry.

And every person who shall offend in any of the premises shall forfeit 5l. half to the king, and half to him who shall sue before the justices in sessions, or in any ordinary court of record; and moreover the sale shall be void; and the owner may take and seize his horse again, or have an action of detinue or replevin for it.

Penalties.

If any horse shall be stolen, and afterwards sold in open fair or market, and the sale shall be conducted in all points as aforesaid; yet such sale, within six months after the felony done, shall not take away the owner's property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or him.

Owner may claim his horse within six months, and afterwards by paying for or him.

have heard Lord Grantley say, that he would never warrant this horse sound. He might be worth 50*l.* or he might not be worth 5*l.* When his Lordship was coming away, he told them they might take 20*l.* for him. Lord Kenyon said, There is no warranty in this case. If the person selling goods knows of no infirmity in what he exposes to sale, he is not bound to disclose that which he did not know, and he may therefore retain the price. But there was a middle case between these two extremes, and the jury would consider whether this was not that middle case. If a person knows there is some imperfection in a horse, and sells him for sound, I think, said his Lordship, that person sins both against the law of morality and against the law of the land: he ought to have disclosed every infirmity which he knew. That Lord Grantley knew his horse's eyes were weak, was evident from the testimony of Mr. Fielding. There was another question in this case highly important, and that was, whether upon the evidence it appeared, that the price this horse sold for was adequate. If it was, he would not say that any fraud had been practised. His Lordship stated the evidence on both sides that related to this point. His Lordship said, the case was reduced to this, whether the price at which this horse was sold was adequate to the situation in which Lord Grantley knew the horse was. The whole was bottomed upon this, that no man in possession of a secret fault of his property, ought to take that property to market, and to take a sound price for it, when the purchaser would not have given so high a price, if this defect had been disclosed to him by the seller. Verdict for the plaintiff 20*l.* *M. S.*

An Adjudication concerning the hiring or stealing of a Horse, frequently cited on Occasions of this Kind.

Hiring and
stealing,
distinction
between.

K. v. Pares. This case was reserved by Mr. Justice *Abbott*, at the Old Bailey, in September session, 1779. The prisoner was indicted for stealing a black horse, the property of *Samuel Finch*. It appeared in evidence that *Samuel Finch* was a livery-stable keeper, and that the prisoner hired the horse of him to go to *Sutton*, in the county of *Surrey*, and back again, saying he lodged at No. 25, in *King-Street*, and should return about eight o'clock the same evening. He did not return; and it was proved that he had sold the horse on the very day he had hired

hired it, to one *William Hobbs*, in *Smithfield* market; and that he had no lodging at the place to which he had given the prosecutor directions. The learned Judge, after admitting that different opinions have been entertained with regard to the law of this class of cases, said, the general doctrine has been, that if a horse be let for a particular portion of time, and after that time is expired, the party hiring, instead of returning the horse to its owner, sell it, and convert the money to his own use, it is felony; because there is then no privity of contract subsisting between the parties. In the present case, the horse was hired to take a journey into *Surrey*, and the prisoner sold him the same day, without taking any such journey. There are also other circumstances which import that, at the time of the hiring, the prisoner had it in intention to sell the horse as his, saying that he lodged at a place where, in fact, he was not known. The jury, therefore, must consider, whether he meant, *at the time of the hiring*, to take such journey, but was *afterwards* tempted to sell the horse.—For, if so, he must be acquitted. But if the jury are of opinion that, *at the time of the hiring*, he had no intention to take the journey, but *intended to sell the horse*, they will find, that fact *specialy* for the opinion of the judges.—The jury found that the facts above stated were true, and also that the prisoner had hired the horse with a fraudulent view, and intention of selling it immediately.

The question was referred to the twelve judges, Whether the delivery of the horse by the prosecutor to the prisoner, had so far changed the possession of the property, as to render the subsequent conversion of it a mere breach of trust, or whether the conversion was felonious! The judges were unanimously of opinion, that the question, as to the original intention of the prisoner in hiring the horse, had been properly left to the jury; and as they had found, that his view in so doing was fraudulent, the parting with the *property* had not changed the nature of the *possession*, but that it remained unaltered in the prosecutor at the time of the conversion, and that the prisoner was therefore guilty of felony.

Great abuses having arisen, and many horses having been stolen, from the facility and safety of disposing of them to those who kept slaughter-houses for horses, some regulations and restrictions seemed absolutely necessary. Act for the establishment of slaughter-houses. It was no uncommon thing for horses of great value to

be sold for the purpose of making food for dogs; the thief rather choosing to receive *twenty shillings* for a stolen horse, without fear or danger of detection, than venture to dispose of him publicly, though he might possibly have found a purchaser who would have given twenty pounds for him. These considerations induced the legislature to pass the act of the 26 G. III. c. 78. for regulating slaughter-houses; to which we beg leave to refer, as it is not sufficiently general to be particularized in this treatise.

HORSE-RACES.

The real owner only can start a horse for a plate.

THE 13 G. II. c. 19. (after stating that the great number of horse-races for small plates or prizes encouraged idleness, and prejudiced the breed of strong and useful horses,) enacts, That no person shall enter, start, or run any horse, (mare or gelding) for any prize, unless the same shall be *bona fide* his own property, on pain of forfeiting the same, or the value thereof. *s. 1.*

One person to start but one horse.

Nor shall one person enter and start more than one horse for one and the same prize; on pain that every such horse, except that which was first entered, shall be forfeited, or the value thereof. *s. 1.*

Plate, &c. not to be worth less than 50l.

It is further enacted by the same statute, that no plate, prize, sum of money, or other thing, shall be run for, or advertised, or proclaimed to be run for, that is not of the real and intrinsic value of 50l. or upwards: and if any person shall enter, start, or run any horse for any such plate, prize, or sum of money, under the value of 50l. or shall make, print, advertise, or publish any advertisement of any such prize, every person so entering, starting, or running such horse, shall forfeit 200l. and every maker, printer, or publisher of such advertisement, shall forfeit 100l. *s. 2.*

Provided that every race that shall be run for any plate, prize, or sum of money, shall be begun and ended in the same day. *s. 4.*

Match to be for 50l. or upwards.

And no person shall start or run any match for any sum of money or other thing, unless it be at *Newmarket* or *Black Hambleton*, or unless such sum or other thing be of the real value of 50l. or upwards, on pain of 100l. *s. 5.*

Penalties how recovered.

The penalties by this act are to be recovered in the courts of *Westminster*, or at the assizes; half to him who shall sue, and half to the poor of the parish where the offence

fence shall be committed; except in the county of *Somerset*, where one moiety shall be applied for the benefit of the poor persons admitted into the hospital or infirmary at *Bath*. *f. 6.*

And all sums of money paid for entrance shall go to the second-best horse. *f. 7.*

Twenty-five pounds betted on each side is deemed a match for 50*l.* though the sum of five pounds was given by one of the parties to procure the bet; as in the case of *Bidmead and Gale*, *E. 9, G. III.* An action of covenant was brought upon articles to run a horse-match. The agreement was, that each should start his mare, and if either of them should refuse or neglect, he should forfeit 25*l.* to the other. It was therefore a match for 25*l.* each side, play or pay; but the plaintiff was to pay the defendant 5*l.* beforehand, as a consideration to induce him to make the match. The defendant afterwards refused to run the match; in consequence of which the plaintiff brought this action against him for the 25*l.* and assigned the breach of covenant in the defendant's not starting the mare. The cause was tried before Mr. Baron *Perrot*, who considered it as a match for 50*l.* and directed a verdict for the plaintiff, with liberty to move in arrest of judgment. A motion in arrest of judgment was accordingly made, and, after some altercation whether this came within the statutes of gaming, the matter was reduced to this single question, Whether this was a match for 50*l.* or for less than 50*l.*? If for less than 50*l.* it is prohibited by the 13 *G. III. c. 10.* For the defendant it was urged, that the match was only for 25*l.* as neither party could lose more than that sum; or at the utmost, a match for 45*l.* the total of both sums risked amounting to no more; for there was no risque remaining upon the 5*l.* The court took a few days to consider this business; after which Lord *Mansfield* declared they were all of opinion, that this was a match for 50*l.* though the stakes were unequal, of which the plaintiff contributed 30*l.* and the defendant 20*l.*; that is, they staked after the proportion of three to two. *Burr. Mansf. 2432.*

By the 24 *G. III. c. 31.* it is enacted, That for every Duty on horse entered to start or run for a plate, prize, sum of horse-racing money, or other thing, a duty shall be paid of 2*l.* 2*s.* over and above all other duties. *f. 1.*

And by the same statute, *f. 5.* The owner of every horse entered as aforesaid, shall previously pay to the clerk 21*s.* paid for one year.

clerk of the course, or other person authorized to make such entry, the sum of 2*l.* 2*s.* as the duty for one year : and if he shall neglect or refuse so to do, he shall forfeit 20*l.*

Clerk of
the course
to account
and pay.

And the clerk of the course, or other person receiving such entrance money, shall, within fourteen days after the receipt thereof, give an account of, and pay the same to the distributor of the stamps, on pain of 100*l.* for not delivering such account, and double the money due at the time of such default; and the distributor shall allow him 1*s.* in the pound for all monies accounted for and paid by him. *f.* 6, 7.

Penalties
how recov-
ered.

The penalties and forfeitures on this act may be recovered before any neighbouring justice by distress; half to the king, and half to him who shall sue; and for want of sufficient distress, the offender shall be committed to prison for three months, unless the penalty shall be sooner paid. *f.* 19, 20.

Appeal.

Persons who think themselves aggrieved may appeal to the next sessions, (giving security to the amount of the penalty and costs,) whose determination shall be final, and they may award costs at their discretion. *Id.*

Penalties may be mitigated, but not exceeding one moiety thereof, exclusive of the costs. *f.* 21.

N. B. The 25 *G. III. c.* 47, does not transfer the management of this duty to the commissioners for the affairs of taxes; therefore the 31 *G. III. c.* 5, which imposes a duty of 10 *per cent.* upon the gross amount of the rates and duties under their management, does not, though it mentions horses generally, increase the duty on horse races.

PUTTING SCABBED HORSES ON COMMONS.

BY the 32 *H. VIII. c.* 13. *f.* 9. No person shall have, or put to pasture, any horse, gelding, or mare, infected with scab or mange, into or upon any forest, chase, moor, marsh, heath, common, waste ground, or other common field, upon pain to forfeit for every horse, gelding, or mare, so infected, pasturing in any of the said grounds, ten shillings; which offence shall be inquirable, and presentable before the steward in every leet, as other common annoyances be; and the forfeiture thereof to be to the lord of the same leet, where the offences shall be presented.

HORSES



HORSES IN HACKNEY COACHES.

BY the 9 *Ann. c. 23. f. 4.* No horse, gelding, or mare, to be used with any hackney coach in London or Westminster, shall be under the size of fourteen hands high, according to the standard, under the forfeiture of five pounds; one moiety whereof to the informer, and the other to the use of his Majesty.

* * For the duty on horse-dealers, licence, &c. in London, Westminster, the Bills of Mortality, and the Borough of Southwark. &c. see 24 G. III. 3 sess. 2. c. 31. 29 G. III. c. 49. and 36 G. III. c. 17.

DUTY ON THE EXPORTATION OF HORSES.

BY the 22 C. II. c. 13. f. 8. It shall be lawful for any person or persons, native or foreigner, at any time or times, to ship, lade, and transport by way of merchandize, horses into any parts beyond the seas, in amity with his Majesty, paying for each horse, mare, or gelding, 5s. and no more.

PUTTING SMALL HORSES ON COMMONS.

In the reign of *H. VIII.* particular attention was paid to the raising a breed of strong horses, and laws were instituted to enforce the completion of that design. To secure strength and size in the progeny, it was thought necessary to select the sires and dams of a certain proportion, size, and mould, and not to permit any mare or stallion to breed but under these restrictions. A law was accordingly promulgated for that purpose.

But in order to give perfect satisfaction upon this business, we shall state the act itself, which remains unrepealed to the present hour. By the 32 *H. VIII. c. 13.* it is enacted, "That no person shall put in any forest, chase, moor, heath, common, or waste, (where mares and fillies are used to be kept), any stoned horse above the age of two years, not being fifteen hands high, within the shires and territories of Norfolk, Suffolk, Cambridge, Buckingham, Huntingdon, Essex, Kent, South-Hampshire, North-Wiltshire, Oxford, Berkshire, Worcester, Gloucester, Somerset, North Wales, South Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, Lancashire, Salop, Leicester, Hereford, and Lincoln; nor under fourteen hands in any other county, on pain of forfeiting the same."

Horses:

But by the 21 *Jac. c. 28. f. 12.* Cornwall is excepted.

And by the 8 *Eliz. c. 28.* the statute of 32 *H. VIII. c. 13.* shall not extend to the marshes in the counties of Cambridge, Huntingdon, Suffolk, Northampton, Lincoln, and Norfolk; provided that the horses be of thirteen hands. *f. 2. 10.*

By the said statute of 32 *H. VIII. c. 3.* "Any person may seize any horse so under size, in manner following: he shall go to the keeper of such forest, or (out of such forest) to the constable of the next town, and require him to go with him to bring such horse to the next pound; there to be measured by such officer, in the presence of three other honest men, to be appointed by the officer; and if he shall be found contrary to what is above expressed, such person may take him for his own use. *f. 3.*

Horses escaping into commons.

"Not to extend to any stoned horse or horses, that shall happen once, in any year, to break or escape out of any several pasture or ground, into any of the said forests, chases, moors, &c. so that the said horse or horses, so breaking or escaping out, do not remain, or abide there by the space of four days, next after notice given at the dwelling-house of the owner, or after open publication thereof, made upon a Sunday or other festival, in the parish church, where the owner or possessor of such horse dwells. *f. 5.*

"And any such keeper, constable, or other of the three persons, who shall refuse to do as aforesaid, shall forfeit 40s." *f. 4.*

Also by the same statute, *f. 6.* "All such commons and other places shall, within fifteen days after *Michaelmas*, yearly, be driven by the owners and keepers, or constables respectively, on pain of 40s. and they may also drive the same at any other time they shall think meet.

"And if there shall be found in any of the said drifts, any mare, filly, foal, or gelding, which shall not be thought able, nor like to grow to be able to bear foals of reasonable stature, or to do profitable labours, by the discretion of the drivers, or the greatest number of them, they may kill and bury them." *f. 7.*

The justices of peace, in their quarter sessions, and stewards of leets and law days, shall have authority to inquire of all defaults, contempts, omissions, and offences against the act; and all presentments shall be certified by the

the steward, deputy steward, or court-holder, in the next general sessions of the peace, or unto the *custos rotulorum* of the shire, within forty days next after the presentment made; which justices, in their sessions, shall have power to hear and determine such presentment; and if any steward, deputy steward, or court-holder, conceal any such presentment, or do not certify the same, he shall forfeit for every such offence 40s.; one half to the King, the other half to the person or persons that will sue for the same, before the justices in sessions." *f. 8.*

This statute had the effect which might naturally be expected, and furnished the kingdom with many stout and useful horses. Carew, in his history of Cornwall, supposes this act of parliament to have been the occasion of losing almost entirely the small breed of horses, which were peculiar to that county. It is known also to have had the same effect in the principality of Wales, where the little breed, once so abundant, is now almost extinct; their scarcity is a proof of the astonishing changes which air, food, and a mixture of blood can produce in the animal world. The loss, however, of these pigmies, which Mr. Carew regrets, was well repaired by a race of larger and more able bodied creatures; for the small animals, however pleasing and useful on their own craggy mountainous country, could not extend their merit beyond its bounds, being inferior to the task of war, the swiftness and fatigue of the chase, the splendour of tournaments, and the magnificent pageantry of the times; which, particularly in the reign of the eighth Henry, all writers agree, were excessive.

SALE OF HORSES WITH AND WITHOUT WARRANTY.

IF the feller of any thing, doth, upon the sale, warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not so, he shall make compensation to the buyer: otherwise it is an injury to good faith, for which an action on the case will lie to recover damages. 3 *Black. Com.* 166.

The warranty must be *upon the sale*, not after it. 1 *Salk.* 211.

Where no time is appointed for delivery of things sold, or for payment of the money, it is generally implied that the delivery be made immediately, and payment on the delivery. 3 *Salk.* 91.

P

If

What
amounts to
a purchase.

If a man says the price of a horse or other thing is twenty pounds, and another says I will give you twenty pounds, but does not pay immediately; it is at the option of the feller whether he shall have it or no, except a day was given for payment. *Id.*

The pro-
perty of a
horse im-
mediately
in the
buyer.

The property of a horse, &c. sold by bargain and contract, is in the buyer immediately; but the seller may keep the horse till he is paid for it, though he cannot bring an action for the money till the delivery, unless the horse die between the contract and the delivery. *Id.*

A warranty that a horse *shall* carry a man thirty leagues a day, is void; for a thing to come cannot be warranted. 1 *Vin. ab.* 581. 2d. ed. 8vo.

If the vender knows the goods to be unsound, and hath used any art to disguise them, or if they are in any shape different from what he represents them to be to the buyer, this artifice shall be equivalent to an express warranty, and the vender is answerable for their goodness. *Finch L.* 189. 3 *Black. Com.* 166.

A general warranty will not extend to guard against defects that are plainly and obviously the object of one's senses; as, if a horse be warranted perfect, and wants a tail or an ear, unless the buyer in this case be blind. 3 *Black. Com.* 165.

Horse
wanting an
eye.

If a horse be warranted sound, and he wants the sight of an eye, though this seems to be the object of one's senses, yet as the discernment of such defects is frequently matter of skill, it hath been held that an action on the case lieth, to recover damages for this imposition. *Id.*

Warranty
how to be
understood.

In the court of common pleas, it was said by Lord *Loughborough*, chief justice, that "*where there is an express warranty, the warrantor undertakes that it is true at the time of making it.*" *Fielder* against *Starkin*, 1 *Hen. Black. Rep.* 19.

As the case of *Fielder* against *Starkin* is important, it is here given at large. It was an action on the warranty of a mare, "*that she was sound, quiet, and free from vice and blemish.*" The cause was tried at *Thetford* spring assizes, 1788, before Mr. Justice *Abbott*, and a verdict found for the plaintiff. It appeared on the trial, that the plaintiff had bought the mare in question of the defendant, at *Winnel* fair, in March, 1787, for thirty guineas, and that the defendant warranted her sound, and free from vice and blemish. Soon after the sale, the plaintiff discovered that she was unsound and vicious; but kept her three months

months after this discovery, during which time he gave her physic and used other means to cure her. At the end of the three months he sold her, but she was soon returned to him, as unsound. After she was so returned, the plaintiff kept her till October, 1787, and then sent her back to the defendant as unsound, who refused to receive her. On her way back to the plaintiff's stable, she died; and, on her being opened, it was the opinion of the farriers who examined her, that she had been unsound a full twelvemonth before her death. It also appeared that the plaintiff and defendant had been often in company together, during the interval between March, when the mare was sold, to the plaintiff, and October, when he sent her back to the defendant; but it did not appear that the plaintiff had ever in that time acquainted the defendant with the circumstance of her being unsound. The jury found a verdict for the plaintiff, with thirty guineas damages.

A rule having been obtained to shew cause why the verdict should not be set aside, the rule was discharged. And by Lord *Loughborough*, chief justice, where there is an express warranty, the warrantor undertakes that it is true at the time of making it. If a horse which is warranted sound at the time of sale, be proved to have been at that time unsound, it is not necessary that he should be returned to the seller. *No length of time elapsed after the sale, will alter the nature of a contract originally false. Neither is notice necessary to be given:* though the not giving notice will be a strong presumption against the buyer, that the horse at the time of sale had not the defect complained of, and will make the proof on his part much more difficult. The bargain is complete, and if it be fraudulent on the part of the seller, he will be liable to the buyer in damages, *without either a return or notice.* If on account of a horse warranted sound, the buyer should sell him again at a loss, an action might *perhaps* be maintained against the original seller, to recover the difference of the price. In the present case it appears, from the evidence of the farriers who saw the mare opened, that she must have been unsound at the time of the sale to the plaintiff. *Gould*, justice, of the same opinion, remembered many cases of express warranty, where a return was not held to be necessary. *Heath and Wilson*, justices, of the same opinion. 1 *H. Black* 17.

In an express warranty the warrantor undertakes that it is true at the time of making.

Return not necessary.

A promise
that a se-
cond horse
should be
worth 80l.

Miles v. Sheward, Mich. 47 G. III. Where the whole consideration of a promise is truly stated, and also all such parts of the promise itself, the breach of which is complained of, it is not necessary to state in the declaration other parts of the promise, not qualifying or varying in any respect the parts so complained of as broken. As where the plaintiff declared, that in consideration of his re-delivery to the defendant of an unsound horse, which he had before then sold to the plaintiff, the defendant promised to deliver to him another horse in lieu, &c. which should be worth 80l. and be a young horse; and the alleged breach in both those respects held sufficient; though the proof was not only of a promise that the second horse should be worth 80l. (which it was not) and be a young horse, but also of a warranty that it was found and had never been in harness. 8 East's Rep. 7.

A horse of
twelve
years old,
sold for one
of six years,
may be re-
turned.

In an action on the warranty of a horse against the seller, tried before *Grose*, justice; the circumstances of the case were these: the horse was sold at a public auction, warranted six years old and found, and one of the conditions of the sale at the auction, was, that the purchaser of any horse warranted found; who should conceive the same to be unsound, should return him within two days; otherwise, he should be deemed found. Ten days after the sale, the plaintiff discovered that the horse in question was twelve years old, and then the defendant refused to receive him; and the plaintiff sold him. It was proved that the horse was twelve years old: but the jury were of opinion, that the plaintiff, by not returning the horse sooner, had made him his own, and gave a verdict for the defendant. And a rule having been obtained to set aside that verdict, the rule was made absolute. By Lord *Kenyon*, Chief Justice, there is no doubt but that the defendant ought to have taken the horse again. The question turns on the meaning of this condition of sale; and I am of opinion, that it must be confined solely to the circumstance of unsoundness. There is good sense in making such a condition at public sales; because, notwithstanding all the care that can be taken, many accidents may happen to the horse between the time of sale, and the time when the horse may be returned, if no time were limited. But the circumstance of the age of the horse is not open to the same difficulty. This is therefore a verdict against evidence. *Buchanan against Pernshaw. 2 Durnf. & East, 745.*

Hence

Hence it appears, that the sale of horses, with or without warranty, is reduced into a very small compass; for at the time of sale, the seller generally either affirms that the horse is found, which amounts to a sale with warranty, or sells him as *unfound*, and then the buyer must take him as he is. If there is no declaration that the horse is found, and he proves to be unfound, the seller is doubtless liable to take him again within a *reasonable time*, provided he is sold for what is called a *found price*.

What is a *reasonable price* depends upon the situation of the parties, their places of abode, and the facility of communication between them; and it seems to be partly a question of law, and partly a question of fact.

After a warranty of a horse as found, the vender in a subsequent conversation said, that *if the horse were unfound* (which he denied) *he would take it again and return the money*. This is no abandonment of the original contract, which still remains open; and though the horse be unfound, the vendee must sue upon the warranty, and cannot maintain assumpsit for money had and received to recover back the price, after a tender of the horse. *Payne v. Whale. Hill. 46 G. III.*

What is to be understood of selling a horse without warranty.

After the warranty of horse.

KILLING OR MAIMING HORSES.

WHERE any person shall, *in the night time*, maliciously, unlawfully, and willingly kill, or destroy any *horses*, sheep, or other cattle of any person, every such offence shall be adjudged felony, and the offender shall suffer as in case of felony. 22 and 23 C. II. c. 7. §. 2.

Killing in the night.

Offenders may be transported for seven years, either at the assizes, or at the sessions, by three justices of the peace; one to be of the quorum. §. 4, 6.

And if any person, *in the night time*, maliciously, unlawfully, and willingly maim, wound, or otherwise hurt any horses, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed, that then every such offender or offenders shall lose and forfeit, unto the party grieved, treble the damage which he or they shall thereby sustain: the same to be recovered by action of trespass, or upon the case. §. 5.

Wounding or hurting in the night time.

No person who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other act or law whatsoever; nor shall be questioned for the same, unless he be proceeded against within six months after the offence committed. §. 7.

By

Killing or
wounding
by the
Black Act.

By the 9 G. c. 22, commonly called the Black Act, it is enacted, that if any person shall unlawfully and maliciously kill, maim, or wound any cattle, every person so offending, being thereof lawfully convicted, in any county of England) shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy.

But not to work corruption of blood, loss of dower, nor forfeiture of lands or goods. *s. 14.*

Limitation.

Prosecution upon this statute, shall, or may be, commenced within three years from the time of the offence committed, but not after. *s. 13.*

In the case of the *King* against *John Pearce*, it was unanimously agreed by all the judges, that as the statute 22 and 23 C. II. c. 7, had made the offence of killing horses a single felony, the statute of the 9 G. I. was only to be considered as an extension of that statute. 2 *Black. Rep.* 721.

A singular Case respecting the maiming of a Horse.

Maiming.

K. v. John Shepherd. At the Old Bailey, in October sessions, 1790, John Shepherd was indicted before Mr. Baron Hotham, present Mr. Justice Heath, on the statute 9 G. I. c. 22. (commonly called the Black Act) for that he, on the 18th of September, a bay gelding, the property of Richard Bond, feloniously, unlawfully, wilfully, and maliciously, did maim, by cutting the tongue of the aforesaid gelding three inches in length, against the form of the statute. The prosecutor, Richard Bond, a farmer at South Mimms, in the county of Middlesex, was possessed of the bay gelding mentioned in the indictment, which was kept at grass in a meadow adjoining to the farm-yard. On the 19th of September, the animal was found lying in the meadow, with its tongue hanging quite out of its mouth, and one part of it, which was quite dead, very nearly severed from the other. The prisoner was servant to the prosecutor, and had solicited him very earnestly to let him have another of the horses, called *Boxer*, to drive in the team, instead of this gelding, which, at the time the mischief was done, was employed under the direction of the prisoner, in carrying dung. The prisoner was seen holding the gelding by the tongue with one hand, while he beat him violently over the head with the butt-end of a whip which he held in the other; but there was no other evidence whatever, that

that the prisoner had any malice against his master, except only, that upon being remonstrated with on the barbarity of his conduct, he had declared, in the heat of his passion, that he would do the other horse an injury, if his master did not let him have *Boxer* to go in the team; neither did the immediate cause of his resentment against the gelding appear. The court left it with the jury to consider, whether, under the circumstances of this case, the prisoner's conduct had been actuated by any motives of personal revenge against his master? or whether the brutality of his conduct had not proceeded from some sudden passion against the gelding itself, excited perhaps by some act of viciousness, or by its untractable disposition? for that, unless they were of opinion that it was done from a malicious motive against the owner of the gelding, however savage and cruel his conduct might appear, he could not legally be found guilty under this statute. *Leach's Cr. Law*, 436.

It was also determined in a similar manner on this branch of the statute of 9 G. c. 21. in the following case. At the Old Bailey in September session, 1789, *John Hean* was indicted before Mr. Justice *Heath*, on the 9 G. c. 21. for that he, on the 22d of October, 1789, maliciously and feloniously did maim and wound one gelding, price fifteen pounds, the property of the king; and it appearing on the evidence that it was done in a moment of passion, the learned Judge directed the jury to acquit the prisoner; for that the offence consisted in maiming the animal out of malice to the master, and not in an exercise of a malicious disposition to the animal.

SUNDRY ADJUDGED CASES CONCERNING HORSES.

IF a horse, or other goods, be delivered to an inn-keeper or his servants, he is bound to keep them safely, and restore them when his guest leaves the house. ^{Home delivered to an inn-keeper.} *Black. Com.* 451. *Cro. Eliz.* 622.

If a horse be delivered to an agisting farmer, for the purpose of depasturing in his meadows, he is answerable for the loss of the horse, if it be occasioned by the ordinary neglect of himself or his servants. *Jones on Bailm.* 91.

Holt, chief justice, doubted whether a man is a guest by setting up his horse at an inn, though he never went into the inn himself; but the other three justices held, that such person is a guest by leaving his horse; as much as if he had remained there himself, because the horse ^{Leaving an horse at an inn makes a man a guest.} must

must be fed, by which the innkeeper has gain; otherwise, if he had left a trunk, or a dead thing. 1 *Salk.* 318.

And it is now settled, that where one leaves his horse at an inn, to stand there by agreement at livery, though neither himself, nor any of his servants lodge there, he is reputed a guest for that purpose, and the innkeeper hath a valuable consideration; and if the horse be stolen, he is chargeable with an action upon the common custom of the realm. *Cro. Jac.* 189. 2 *Lord Raym.* 863.

If my servant, upon my business, come to an inn, and ride upon my horse, and he is there stolen, I may have an action against the host; because the absolute property is in me. 1 *Roll. Abr.* 3.

Guest desiring his horse to be put to pasture.

If a man come to a common hostler (innkeeper) to lodge, and desire that his horse be put to pasture, and the host puts him to pasture accordingly, where the horse is stolen, the host shall not be charged; because he is not bound by the law to answer for any thing which is out of his inn, 1 *Vin. Abr.* 228. But, in this case, he is chargeable for ordinary negligence, as a bailee for hire, though not as an innkeeper, by the general custom of the realm. *Jones on bailm.* 92.

But if the owner do not require the host to put his horse to graze, but the host do it of his own head, he shall answer for it if the horse be stolen. 1 *Vin. Abr.* 228.

Horse may be retained for expenses.

If a man ride to an inn, where his horse has eat, the host may retain the horse, till he be satisfied for the eating, and that without making any demand. 14 *Vin. Abr.* 437. 1 *Vent.* 71. 2 *Lord Raym.* 867.

But only for his own meat.

But a horse committed to an innkeeper, can only be detained for his own meat, and not for that of his guest, or any other horse; for the chattels, in such case, are only in the custody of the law for the debt which arises from the thing itself, and not for any other debt due from the same party, 2 *Roll. Abr.* 85, 1 *Bulst.* 207.

If I deliver my horse to pasture, the innkeeper may detain him till satisfaction for the eating. 14 *Vin. Abr.* 438.

Innkeeper must not use him.

But an innkeeper, who detains a horse for his meat, cannot use him; because he detains him as in the custody of the law; and consequently, the detention must be in the nature of a distress, which cannot be used by the distrainer. *Bac. Abr.* Inns.

If I put my horse in an inn, though the horse has eat
5 his

his value, yet the innkeeper cannot sell the horse for the eating. 14 Vin. Abr. 438. 8 Rep. 147.

But, by the custom of *London and Exeter*, if a man commit a horse to an innkeeper, if he eat out his price, the innkeeper *may take him as his own*, upon the reasonable appraisement of four of his neighbours; which was, it seems, a custom arising from the abundance of traffic with strangers, that could not be known so as to be charged with an action:

Except in
London
and
Exeter.

But it hath been holden, though an innkeeper in London, may, after long keeping, have the horse appraised, and *sell him*; yet, when he has in such case had him appraised, he cannot justify the *taking him to himself*, at the price he was appraised at. 1 Vin. Abr. 239. Burn. Rep. B. R. 301. And in this there seems to be good sense, for there might be fraud, were the innkeeper permitted to take the horse at an appraisement. An innkeeper in London, would at least act more prudently in having the horse sold, than in taking him himself at an appraisement.

The custom of London to stop and sell horses for their meat, is only that *the same horse may be sold for his own keeping*, and not for the keeping of other horses, though of the same owner. 14 Vin. Abr. 438. Bull. 207.

If a smith prick my horse, an action upon the case lies against him. 1 Vin. Abr. 563.

Smith
pricking a
horse.

* If I deliver my horse to a smith to shoe, and he deliver him to another smith, who pricks him, I may have an action upon the case against him, though I did not deliver the horse to him. 1 Vin. Abr. 560.

If a farrier, though not a common farrier, assume to cure my horse of a malady, if he kill the horse through negligent administration of his medicines, an action upon the case lies against him. 1 Vin. Abr. 578.

In an action against an auctioneer, for carelessly and negligently selling the plaintiff's gelding, which he had directions *not to let go under 15l. for a less sum, viz 6l. 16s. 6d.* contrary to such directions, a verdict was given for the plaintiff, subject to the opinion of the court, upon this question; whether the auctioneer was bound to bid for, and buy in the horse, if no one bid to the amount of 15l. for it? Lord Mansfield, upon reporting the case, said, that the practice at auctions, of owners buying in their own goods, struck him as a fraud upon the public; and that the nature of these sales required the goods should go to the best *real* bidder. And, after

Auctioneer
not ac-
countable
for letting
a horse go
for a less
sum than
had been
mentioned
to him.

hearing counsel, his lordship said, there is no express undertaking on the part of the defendant, nor is it, as has been ingeniously said, a direction that there should be no bidding under 15*l.* which might be fair. But the direction given to the defendant is "not to let the horse go under fifteen pounds," which implies, there might be a bidding under that sum. Upon full consideration, I am of opinion, that a bidding for the owner, in the manner contended for, and agreeable to the directions given in this case, would have been a fraud upon the sale; and consequently that this action against the defendant, as an auctioneer, cannot be maintained.—*Aspin, Willes, and Ashhurst*, justices, of the same opinion. *Cowp.* 395.

HUNDRED.

How far the county is liable to make good the mischiefs produced by riots. *Burrows v. Wright and another. Tr. 41 G. III.* Where a mob attacked a baker's house, and broke the glass and shutters of the windows, and compelled the baker to sell flour at a price named by themselves, below the marketable value; held, this was evidence for the jury, and a felonious beginning to demolish the house, &c. within the 4th section of the riot act; and that the plaintiff might recover for the damage done to the house in an action against the Hundred, on the 6th section, but not for the value of the flour so sold, that not being consequential to the act of demolition. Nor could he recover for the value of other flour taken and wasted in another warehouse, distinct from his dwelling-house on the opposite side of the street, of which the lock only was burst; that not being a beginning to demolish, &c. within the act, with the view with which it appeared to have been done. *1 East's Rep.* 615.

INCLOSURES PULLING DOWN.

BY the 9 G. III. c. 9. Any person who shall wilfully or maliciously demolish, pull down, or otherwise destroy or damage, any fence raised or made for dividing or inclosing any common, waste, or other lands, in pursuance of any act of parliament, or shall cause or procure the same to be done, shall be guilty of felony, and transported for seven years. Prosecution to be commenced within eighteen months after the offence committed.

LORD'S DAY.

LORD'S DAY.

ALL persons, not having a reasonable excuse, shall resort to their parish church or chapel (or some congregation of religious worship allowed by the toleration act) on every Sunday, on pain of punishment by the censures of the church, and of forfeiting 1s. to the poor for every offence. To be levied by the churchwardens by distress, by warrant of one justice. *2 Eliz. c. 2. 3 Jac. c. 4.*

Resorting to church.

No shoemaker shall shew, to the intent to put to sale, any shoes, boots, &c. upon a Sunday, on pain of 3s. 4d. a pair, and the value thereof; to be recovered at the assizes, sessions, or leet; one third to the king, one third to him who shall sue, and one third to the town or lord of the leet. *1 Jac. c. 22.*

Selling shoes on a Sunday.

By the 23 C. II. c. 1. No carrier with any horse or horses, nor waggonmen with any waggon or waggons, nor carmen with any cart or carts, nor wainmen with any wain or wains, nor drovers with any cattle, shall by themselves, or any other, travel on the Lord's day, on pain of 20s. or if any butcher, by himself, or any other for him, with his privity and consent, shall kill or sell any victuals on the Lord's day, he shall forfeit 6s. 8d. The conviction to be in six months, before one justice, on view, confession, or oath of two witnesses; to be levied by the constable or churchwarden, by distress; or to be recovered in any court of record, in any city or town corporate, before the justices in sessions; to the use of the poor, except that the justice may reward the informer or prosecutor with part of the forfeiture, not exceeding one third part. This act continued in force one year; but was afterwards enforced as follows:

Carriers travelling, or butchers selling meat on a Sunday.

No drover, horse-courser, waggoner, butcher, higler, or any of their servants, shall travel, or come to his inn or lodging on the Lord's day, on pain of 20s. No tradesman, artificer, workman, labourer, or other person, shall exercise any worldly labour, business, or work of their ordinary calling on the Lord's day (except works of necessity and charity) on pain of every offender, above 14 years of age, forfeiting 5s. No person shall publicly cry, or expose to sale, any wares, merchandize, fruit, herbs, goods, or chattels on the Lord's day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackerel, which may be sold before or after divine service), on pain of forfeiting the

Other persons working or travelling on a Sunday.

Milk and mackerel excepted.

same. No person shall travel on the Lord's day, with any boat, wherry, lighters or barge, (unless allowed by a justice, on extraordinary occasions; and except 40 watermen, who may ply on the Thames betwixt Vauxhall and Limehouse) on pain of 5s. And if any person offending in any of the premises, shall thereof be convicted in ten days after the offence, before one justice, on view, confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods cried, or put to sale, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice may, out of the same, reward the informer with not exceeding one third part. And, for want of distress, the offender shall be set publicly in the stocks for two hours. 29 C. II. c. 7. 11 and 12 W. c. 21.

Fish carriages shall be allowed to pass on Sundays and Holidays, whether laden or returning empty.

Several convictions for offending the same day incur but one penalty.

In the case of *Crapps v. Durden*, T. 17 G. III. The plaintiff was convicted by four separate convictions, in the sum of 5s. each, for selling small hot loaves on the same day, being Sunday. But by Lord Mansfield: The true construction of the act is, exercising his ordinary trade on the Lord's day, and that without any fraction of a day, hours, or minutes. The penalty incurred is 5s.; there can be but one entire offence on one and the same day. And this is even a much stronger case than that upon the game laws: killing a single hare is an offence, but the killing ten more on the same day will not multiply the offence, on the penalty imposed by the statute for killing one. *Cowper*, 640.

Baking puddings, pies, &c.

E. 32 G. II. *K. v. Cox*. An information was moved for, against a justice, for refusing to receive an information against a baker, for exercising his trade on a Sunday, contrary to 29 C. II. c. 7. On shewing cause, it appeared, that the charge against the baker was, not for baking bread, but for baking puddings, and pies, and other such things for dinner. The court were of opinion, that this was not an offence within the act; but falls within the exception of works of necessity and charity, and within the equity of the proviso, as being a cook's shop; there being the same reason that the baker should bake for others, as that a cook should roast and boil for them: and it is better that one baker and his men should stay at home, than many families and servants. And the rule to

to shew cause was discharged, with costs. *Burr. Mansfield*, 785.

Killing game on the Lord's day, or Christmas day, incurs a forfeiture of 20*l.* or not less than 10*l.* for the first offence; for the second offence 30*l.* or not less than 20*l.* And for every other offence 50*l.* Killing game on a Sunday.

By the 34 *G. III. c. 41*, Bakers in London, or within twelve miles thereof, are permitted to sell bread, or to bake meat, puddings, or pies *only*, on the Lord's day, between nine o'clock in the forenoon and one in the afternoon, so as the person requiring the baking thereof shall carry or send the same to and from the place where such meat, pudding, or pie is baked. But the same act imposes a penalty of 10*s.* on those who exercise the trade of baking, &c. on a Sunday, except on the above conditions. Baking meat, &c. between nine and one.

By the 29 *C. II. c. 7*. No person upon the Lord's day, shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace) but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment or decree. Serving process on a Sunday.

No hundred shall be answerable for any robbery on the Lord's day: but the inhabitants shall make hue and cry after the offenders, as on any other day.

By the 21 *G. III. c. 19*. Any house, &c. opened for public amusement or debate, on a Sunday, to which persons shall be admitted by payment of money, or by tickets sold for money, shall be deemed a disorderly house, and the keeper thereof shall forfeit 200*l.* for every such day that such house shall be used as aforesaid. The president, for every such offence, shall forfeit 100*l.* to such person as will sue for the same; and every servant or other person, who shall deliver out, or receive money or tickets for admitting persons on the Lord's day, shall also forfeit 50*l.* Penalty on opening houses of public amusement

Any person advertising any such public amusement for the Lord's day, to which persons are to be admitted by money or tickets, and any persons printing or publishing any such advertisement, shall forfeit 50*l.* for every offence. *Id.*

MADDER.

BY the 31 *G. II. c. 35*. If any person shall steal and take away, or wilfully and maliciously pull up or destroy any madder roots, and shall be convicted thereof before one justice by confession, or oath of one witness, he shall, for the first offence, pay to the owner such satisfaction for damages, and in such time as the justice shall appoint, and shall also pay down, upon conviction, to the overseer for the use of the poor, such sum, not exceeding 10s. as to the justice shall seem meet; and if he shall not make such recompence, and pay such sum to the use of the poor, the said justice shall commit him to the house of correction for not exceeding one month, or may order him to be whipped by the constable or other officer, as to the said justice shall seem meet; and for the second offence, shall by such justice be committed to the house of correction for three months. Prosecution to be commenced within thirty days.

MILLERS.

A miller
may be in-
dicted for
changing
corn.

A MILLER may be indicted as a cheat for changing corn, as in the case of *K. and Wood, T. 16 G. II.* The defendant, a miller, was indicted for changing *good* corn delivered to him to be ground, and giving *bad* corn instead of it. It was moved to quash it, as being only a private cheat. But it was answered that, being a cheat in the way of trade, it concerned the public, and therefore was indictable. The court was unanimous not to quash it. 1 *Seff. Cas.* 217.

Millers not
to be ma-
gistrates.

Magistrates may search mills for adulterated meal, &c. 31 *G. II. c. 29. f. 29*. Millers, bakers, &c. not to act as magistrates under this act.

Destroying
mills.

By 9 *G. III. c. 29*. maliciously to burn or destroy any mill, or riotously or tumultuously to demolish, or begin to demolish, any mill, or the works thereto belonging, is felony without benefit of clergy.

By the 36 *G. III. c. 85* From and after July 1, 1796, every miller shall have in his mill a true balance, with proper weights; and the persons appointed under the act respecting weights, may examine and proceed with respect to them in the same manner as is provided in the said act; and every miller, in whose mill shall be found no balance or weights, shall forfeit not exceeding 20s.; and every miller

Servants.

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millers, in whose mill shall be found any weight not according to the standard in the Exchequer, or any false or unequal balances, and all persons obstructing such persons examining the same, shall forfeit as for like offences against the said act.

Every person may require the miller to weigh, in his presence, the corn before it shall be ground, also after it shall be ground, and if he refuse, he shall forfeit not exceeding 40s.

Every miller shall, if required, deliver the whole produce of the corn, allowing for the waste in grinding, and toll, where toll is herein-after allowed to be taken, on pain to forfeit not exceeding 1s. per bushel, and treble the value of the deficiency.

Where toll is allowed to be taken, it shall be deducted before the corn is put into the mill.

From and after June 1, 1796, no miller shall, under the penalty of 5*l.* take any part of the corn or of the produce for toll, but in lieu thereof he shall be entitled to demand payment in money.

But where the party shall not have money to pay for grinding, the miller with his consent, may take such part of the corn as will be equal to the money price expressed in their table of prices for grinding.

Also, nothing in this clause shall extend to the ancient mills, called *foke mills*, or such others where the possessors are bound to grind for particular persons, or within particular districts, and to take a fixed toll.

From and after June 1, 1796, every miller shall put up in his mill a table of the prices, or of the amount of toll at his mill, on pain to forfeit not exceeding 20s.

This act does not extend to mills kept for private use.

The penalties may be recovered within ten days before one justice, and they go one moiety to the informer, and the other to the poor of the parish.

But any person aggrieved by the judgment of such justice, may, upon giving security for the penalty and costs, appeal to the sessions.

SERVANTS.

SERVANTS are either menial domestics living with-
in the walls of the house; or such as are no part of the
master's family, but are hired to perform particular work
or business. If a servant be under age, his agreement
with a master to his disadvantage shall not prejudice him,
but

but if it be to his advantage it will be good in law. — *Dalt. c. 58.*

Assaulting
his master.

A servant assaulting his master shall be imprisoned for a year, or such less time as two justices shall think fit. *5 Eliz. c. 4.* A master may, with moderation, chastise his servant, being under age, but if a master or mistress beats a servant of full age, it may be a good cause of discharge, on complaint to two justices. *1 Black. 428.*

A master may assist a servant in any action at law against a stranger, though in general it is an offence to encourage suits and animosities, and is called maintenance. *Id. 429.*

Beating a
man's ser-
vant.

A master may bring an action against any man for beating or maiming his servant; but he must assign, as a special reason for so doing, his own damage by the loss of his service, which must be proved upon the trial, and the servant also may maintain an action for the battery or imprisonment. *3 Black. 142.*

Beating a
servant's
master.

So a master may justify on assault and battery in defence of his servant, for otherwise he might lose his service; as a servant may justify an assault and battery in defence of his master. *Wood, b. 1. c. 6.*

Nuisance
by a ser-
vant.

The master is indictable for a nuisance done by his servant; as for throwing dirt in the highway: and the servant is also indictable. If an inn-keeper's servant rob his guests, his master is bound to restitution. *1 Black. 435.*

Master not
liable for a
wilful act
of his ser-
vant.

M^r Manus v. Crickett, Mich. 41 G. III. But a master is not liable to trespass for the wilful act of his servant, as by driving his master's carriage against another, done without the direction or assent of the master. But he is liable to answer for any damages arising to another, from the negligence or unskilfulness of his servant acting in his employ. *1 Eass's Rep. 106.*

Paying mo-
ney to a
servant.

If I pay money to a banker's servant, the banker is answerable for it; but if I pay it to a man's servant who does not usually receive money for his master, and he embezzles it, I must pay it over again. *1 Black. 430.*

If a smith's servant lames a horse in shoeing him, an action lies against the master, and not against the servant. *Id. 431.*

How far a
master is
answerable
for his ser-
vant.

If I usually deal with a tradesman by myself, or constantly pay him ready money, I am not answerable for what my servant takes up upon trust; for here is no implied order to the tradesman to trust my servant; but if I usually send him upon trust, or sometimes on trust, and sometimes

sometimes with ready money, I am answerable for all he takes up; for the tradesman cannot possibly distinguish when he comes by my orders and when upon his own authority. *Id.*

If a steward lets a lease of a farm without the owner's knowledge, the owner must stand to the bargain, for this is the steward's business. *Id.* If a servant is robbed of the master's money, the master, or the servant, may bring the action against the hundred. *Wood, h. i. c. 6.*

The King v. Higgins, Mich. 42 G. III. To solicit a servant to steal his master's goods is a misdemeanor, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done except the *soliciting* and inciting. And such offence is indictable at the sessions, having a tendency to a breach of the peace. *2 East's Rep. 5.*

Urging a
servant to
rob his
master.

SESSIONS.

THE Sessions of the Peace is a court of record holden before two or more justices, whereof one is of the quorum, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. *Dalt. c. 185.*

Such sessions only are properly called general quarter sessions, which are holden in the four quarters of the year, in pursuance of the *2 H. V.* Any other sessions holden at any other time for the general execution of the justices' authority, may be properly called general sessions. And those holden on a special occasion for the execution of some particular branch of their authority, may properly be called special sessions. *2 Hawk. 42.*

Quarter
sessions.

The justices shall keep their sessions in every quarter of the year at least, and for three days, if need be; to wit, in the first week after the feast of St. Michael, in the first week after the Epiphany, in the first week after Easter, and in the first week after St. Thomas, and more often if need be. *12 R. II. c. 10.*

Except in Middlesex; where the justices shall keep their sessions twice in the year at least, and more often (if need be) for any riot or forcible entry within the said county. *14 H. VI. c. 4.*

The strict and regular exposition of the statute of *2 H. V.* is, that, if the feast day fall on the Sunday, the sessions shall be held in the week following, and not the same week. *2 H. H. 43.*

Quarter sessions different in different counties.

Yet the quarter sessions are variously held in several counties, some at one day, and some at another; and it has been ruled that these are each of them good quarter sessions, within the several acts relating to quarter sessions; for those acts, especially that of 2. *H. V.* is only directory and in the affirmative; and therefore, though the sessions are held on another day, according to the general direction of the 12 *R. II.* yet they are quarter sessions, 2 *H. H.* 50.

N. B. How many adjournments soever shall be holden afterwards in that quarter of the year, all shall refer to the first commencement of the sessions. 4 *Burn.* 181.

Any two justices, one whereof is of the quorum, by the words of the commission of the peace, may issue their precept to the sheriff to summon a session, for the general execution of their authority; and such session, holden at any time within that quarter of the year, is a general quarter session. *Id.*

Any two such justices may direct their precept under their teste to the sheriff, for the summons of the sessions, thereby commanding him to return a grand jury before them, or their fellow-justices, at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties, to be present and do their duties at such day and place, and to proclaim in proper places throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 *Haw.* 41.

And such precept should bear teste, or be dated, fifteen days before the return. *Nels. Intr.* 35.

The sheriff also shall cause a jury to appear on such days and places, as the said justices, or such two or more of them as aforesaid shall appoint. *Lamb.* 382.

Justices must be present.

1. The justices of the peace are compellable to appear at the sessions; for without their appearance the sessions cannot be holden. *Dalt. c.* 185.

But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption.—An order was quashed for that reason. 2 *Salk.* 607.

And the custos rotulorum, the sheriff, coroners, high con-

2. The custos rotulorum ought to be there himself, or by his deputy, who is the clerk of the peace.—3. The sheriff also, by himself or his deputy, to receive the fines, to return jurors, to execute process, and what else to his office doth appertain.—4. All coroners.—5. The high

constables, and all other officers to whom any warrant ^{stables,} hath been directed, in order to make return thereof.—&c.

6. All bailiffs of hundreds and liberties, as they are bound to give an account of all sessions process.—7. The gaoler, to bring thither his prisoners, and to receive such as may be committed.—8. The keeper of the house of correction, to give in a calendar and accounts of persons in his custody.—9. All persons returned by the sheriff, by virtue of the aforesaid precept.—And the jurors not appearing according to their summons, are punishable by loss of issues, which usually make part of the estreats of sessions.—10. All persons returned by recognizance to answer, or to prosecute, and give evidence. *Dalt. c. 183.*

All persons may freely attend at the sessions for the advancement of public justice, and for the service of the king.—And they are invited thither by a certain freedom of access, and by protection from common arrest. *Dalt. c. 185.*

In the arguments on colonel *Pitt's* case, *T. 7. G. II.* which was an arrest in his return from parliament, it seems to have been agreed, that not only in the high court of parliament, but also in the inferior courts, the parties to the suit, and the witnesses, are protected in going, continuing, and returning. And this returning has never been so very nicely scanned, as to require a man to go the direct road. Nor is the protection forfeited by the plea of going out of the way, because it may be the party went to buy a horse, victuals, or other necessaries for his journey. Neither is the law so strict in point of time, as to require a person to set out immediately after the trial is over; in support of which was cited the case of *Hatch v. Blisset, T. 13 Ann.* She had a trial at *Winchester* assizes, which was ended on *Friday* at four in the afternoon. She continued there till after dinner on *Saturday*, and in the evening at seven was arrested going home to *Portsmouth*, which is twenty miles: and the court held that she ought to be discharged, her protection not being expired, and a little deviation of loitering would not alter it. *Str. 987.*

No person shall act as solicitor, attorney, or agent, to sue out any process at any general or quarter sessions, either with respect to matters of a criminal or civil nature, unless he is admitted and inrolled according to law; on pain of 50*l.* to him who shall sue in twelve months, with treble costs. *22 G. II. c. 46.*

Sessions.

Where authority is given to two justices to do any act, the sessions may do it in all cases, except where appeal is directed to the sessions. *L. Roy. 426.*

Justices may issue their warrants for apprehending persons charged with crimes within the cognizance of the sessions, and bind them over to appear there, although the offender be not yet indicted. *1 H. H. 579.*

If jurisdiction be given to the sessions, to hear and determine, and doth not say by information, this shall be by indictment, and not upon information. *Dalt. c. 191.*

The sessions is all as one day, and the justices may alter their judgments, at any time whilst it continues. *2 Salk. 606.*

It seems certain, that the sessions hath no authority to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery. *Inter partes non est potestas. 2 Haw. 41, 42.*

The sessions may proceed to outlawry in cases of indictments found before them: but they cannot issue a *capias utlagatum*, but must return the record of the outlawry into the King's Bench, and thence process of *capias utlagatum* shall issue. *21 Jac. c. 4. 2 H. H. 52.*

The sessions have no jurisdiction over forgery.

The King v. Micab Gibbs, Hill. 41 G. III. It was determined in this case that the sessions have no jurisdiction over the offence of forgery at common law, nor can they take cognizance of it as a cheat. *1 East's Rep. 41 G. III.*

The sessions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *Self. C. P. 2. 176.*

The justices are not punishable for what they do in sessions: unless there be some manifest act of oppression, or wilful abuse of power. *2 Barnardsh. 249, 250.*

Proclaiming the session.

The justices being met, the usual course is with three o-yes [from the French *oyer*, to hearken] to proclaim the sessions, and then read the commission of the peace; then the grand jury are called and sworn, and the charge given to them. *Dalt. c. 185.*

When to take the qualification oaths.

If there be any who are to take their oaths, in order to qualify them for offices, this must be done between the hours of nine and twelve in the forenoon, and not otherwise. *35 C. II. c. 2.*

Proclamation against profaneness.

The king's proclamation against profaneness and immorality is also to be read: and likewise divers acts of parliament against popery, the riot act, the black act; the

the act about ale measures, and about burning in wotton, are required to be given in charge at the sessions; the acts concerning jurors are to be read in Midsummer sessions yearly; and the statute against bribery and corruption, in elections of members of parliament, is to be read at every Easter sessions. 5 *Eliz. c. 1.* 1 *G. c. 5.* 9 *G. c. 22.* 11 and 12 *W. c. 15.* 30 *C. H. c. 3.* 4 and 5 *W. c. 24.* 7 and 8 *W. c. 32.* and 4 *An. c. 18.* 3 *G. II. c. 25.* 2 *G. II. c. 24.*

It is the practice to try all simple larcenies at the quarter sessions, whatever may be the value of the article stolen; but it is stated in the indictment to be of some value, not exceeding one shilling, in order to reduce the crime to petty larceny. The justices never try any felonies, upon conviction for which the prisoner must pray the benefit of clergy, or now the benefit of the statute, 4 *Black. c. 19.* See stat. 5 *An. c. 6.* They cannot try any new-created offence, without express power given them by the statute which creates it. 4 *Mod. 379.* *Salk. 406.* *Lord Raym. 1144.*

There are many offences, which, by particular statutes, belong properly to this jurisdiction, and ought to be prosecuted in this court: as the smaller misdemeanors against the public or common-wealth, not amounting to felony; and especially offences relating to the game, highways, alehouses, bastard children, the settlement and provision of the poor, vagrants, and servants' wages, apprentices, and popish recusants. Some of these are proceeded upon by indictment; and others in a summary way, by motion and order thereupon; which order may, for the most part, unless guarded against by particular statutes, be removed into the court of King's Bench, by writ of *certiorari facias*, and be there either quashed or confirmed.

But by stat. 13 *G. II. c. 18.* no *certiorari* shall be granted to remove any conviction, judgment, order, or other proceedings before any justice of the peace, or sessions, unless it be applied for in six calendar months after such proceedings had or made.

Where authority is given to two justices to do any act, the sessions may do it in all cases, except where appeal is directed to the sessions. *Lord Raym.*

Then the recognizances may be called, especially such as are to prosecute and give evidence, so that bills may be drawn and prepared. *Dalt. c. 185.*

Upon appeals to be made to the sessions against judgments

To try all simple larcenies.

Offences belonging properly to this jurisdiction.

No certiorari granted after six months.

Recognizances called.

Appeals against judgments.

Sheep.

ments or orders, the justices shall cause any defect of form, in such original judgments or orders, to be rectified and amended, and then shall proceed upon the merits.

5 G. II. c. 19.

Trespass
and assault.

In case of trespass and assault, the court frequently recommends to the defendant to talk with the prosecutor; that is, to make amends for the injury done him; and if the prosecutor comes and acknowledges a satisfaction received, the court will only set a small fine on the defendant. *Cr. Cir. Com. 52.*

Prosecutor
and defend-
ant agree-
ing.

Sometimes the prosecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving, by a subscribing witness, a general release executed by the prosecutor, the defendant submits to a small fine, such as the court is pleased to impose. *Id.*

The sessions are not obliged to give a reason for their judgment in the orders they make, any more than any other of the courts of law. *2 Salk. 107.*

SHEEP.

TO prevent many farms from being accumulated into few hands, and for the encouragement of tillage, the 25 *H. VIII. c. 13*, enacts, That no person shall have more than 2000 sheep at one time, at six score to the hundred, except upon his own inheritance only, and except what is necessary for his household; on pain of forfeiting *3s. 4d.* for every sheep above that number; half to the king and half to him who will sue.

And if any person, by reason of being executor or administrator shall happen to have more, he shall sell off within a year till he have but 2000. *Id.*

But sheep which are bequeathed to a child within age, shall not be reckoned in the number. *Id.*

When
lambs be-
come sheep

And lambs shall not be reckoned sheep till the second *Midsummer* after they are lambled. *Id.*

And the justices may inquire of this offence by a jury, or by information.

No person
shall have
more than
two farms.

For the same reason, no person shall take above two farms with houses thereon; nor shall any person have two, except he shall dwell in the parish where they both are; on pain of *3s. 4d.* a week in like manner.

Sheep-
stealing
death with

Any person who shall feloniously drive away, or feloniously steal any sheep or lamb; or wilfully kill any sheep
or

or lamb, with a felonious intent to steal the carcase or out benefit any part thereof; or assist or aid in committing any of the of clergy. said offences, shall be guilty of felony without benefit of clergy. 14 G. II. c. 6. *f.* 1. 5 G. II. c. 34.

And by the 14 G. II. c. 6. Any person who shall apprehend and prosecute to conviction any such offender, shall have a reward of 10*l.*; for which purpose, he shall have a certificate signed by the judge, before the end of the assizes, certifying such conviction, and where the offence was committed, and that the offender was apprehended and prosecuted by the person claiming the reward; and if more than one claim it, he shall therein appoint what share shall be paid to each claimant. And on tendering such certificate to the sheriff, he shall pay the same within a month without deduction, or forfeit double, with treble costs. To be allowed in his accounts, or be repaid him out of the treasury. *f.* 2, 3.

By the 22 and 23 C. II. c. 7. Any person who shall, in the night-time, maliciously and willingly kill any sheep, shall be guilty of felony: but to avoid judgment of death he may make his election to be transported for seven years. And three justices (1 *Q.*) may hear and determine the same. *f.* 2.

And any person who shall, in the night-time, maliciously and willingly maim, wound, or otherwise hurt any sheep, whereby the same is not killed, shall forfeit to the party grieved treble damages, by action of trespass, or on the case. *Id.*

By the 28 G. III. c. 38, Every person who shall export any live sheep or lambs, shall forfeit 3*l.* for every sheep or lamb, and shall also suffer solitary imprisonment for three months, without bail, and until the forfeiture be paid, but not to exceed twelve months for such non-payment: and for every subsequent offence 5*l.* a-piece, and imprisonment for six months, and until the forfeiture be paid; but not to exceed two years for the non-payment thereof. And all ships and vessels employed therein shall be forfeited. Exporting sheep or lambs.

Also by this act of 28 G. III. c. 38, the EXPORTATION of WOOL, and WOOLLEN MANUFACTURES, is particularly regulated and restricted.

STAR OR BENT.

Punish-
ment for
removing
star or bent
in Lancar-
shire, &c.

BY the 15 G. II. c. 33. §. 6. It is enacted, That whereas upon the north-west coast of this kingdom, and especially upon the county palatine of *Lancaster*, the sea is bounded, and the adjacent lands are prevented from being over-flowed, by large sand-hills, which are composed of such loose sand, that, in dry weather, when any violent strong west winds happen to blow, the same is carried away, and thrown upon the adjacent lands, to the damage thereof, and to the great terror and danger of the inhabitants, who are thereby exposed to the inundations of the sea; and whereas it has been found by experience, the best way to preserve the said hills from being blown away as aforesaid, is to plant them with a certain rush or shrub called *star or bent*, which proves an effectual method for keeping the same firm and solid, and which the owners of the said lands are at great costs and charges in yearly setting and planting for that purpose; it is therefore enacted, that if any person shall, without consent of the lord or owner of such star or bent hills, cut, pull up, or carry away any star or bent planted or set on the said hills or banks, on the north-west coast of *England*, it shall be lawful for one or more justices of the peace, &c. where such star or bent shall be cut, pulled up, or carried away, and such justice is hereby empowered, upon complaint or information upon oath made of such offence, to summon the party or parties so complained of, and in default of appearance thereon, to issue his warrant to apprehend and bring before him the person so accused or complained of; and upon proof, by confession, or the oath of one credible witness, to convict the offender; and every person, being thereof convicted, shall forfeit 20s. half to the informer, and half to the lord or owner of such star, bent, or sand-hills, to be levied by distress and sale: and for want of sufficient distress, the said justice is required to commit the person so convicted to the house of correction, to hard labour for three months; and if any person shall be convicted of a second offence, he shall be committed to the house of correction for one year, there to be whipped and kept to hard labour. §. 6.

Punish-
ment for
finding
bent in the
possession
of any one,

And if any star or bent shall be found in the possession of any person within five miles of any such star, bent, or sand-hills, such person being convicted thereof, shall be deemed the cutter and puller of such star or bent from such

such sand-hills, and shall forfeit 20s. half to the informers and half to the lord or owner of such star, bent, or sand-hills, to be levied as aforefaid; and for want of distress, shall be committed to the house of correction, to hard labour for three months. *f. 7.*

But nothing in this act shall extend to prohibit or restrain any person from the exercise or enjoyment of any ancient prescriptive right, to cut star or bent upon the sea-coasts in the county of *Cumberland.* *f. 8.*

SHIRE-HALL.

BY the 9 *G. III. c. 20. f. 1.* The justices in sessions, on presentment of the grand jury at the assizes, of the ill state and condition of the shire-hall, or other building used for holding the assize, and the necessity of repairing it, may order it to be repaired as they shall think fit, and the money to be levied as for other county-rates. The justices in sessions may order the shirehall to be repaired

And if sudden repairs are required, which will not cost more than thirty pounds, two justices, after having viewed the same, and an estimate having been made by able workmen of the expence thereof, may order it to be repaired. *Id. f. 3.* Sudden repairs.

Provided, that where it has been for time out of mind repaired at the expence of particular persons or places; or any particular places or persons are bound by law and ancient usage to furnish it with benches, rails, or other fixtures, they shall continue liable as before. *f. 2, 3.* When repaired by particular places or persons.

And by the 14 *G. III. c. 59.* It is enacted, That the justices, in their quarter-sessions, may direct the shire-hall, or other court of justice within their jurisdiction, to be properly ventilated; the expences of which are to be paid out of the general county-rate. Shire-hall to be ventilated.

TITHES.

MR. SELDEN has shewn us, that tithes were not introduced in *England*, till towards the end of the eighth century, *i. e.* about the year 786, when parishes and ecclesiastical benefices came to be settled; for, as it is said, tithes and ecclesiastical benefices being correlative, the one could not exist without the other; for whenever any ecclesiastical person had any portion of tithes granted to him out of certain lands, this naturally constituted the benefice; the granting of the tithes of such a manor or parish, When first introduced into England.

being in fact a grant of the benefice; as a grant of the benefice implied a grant of the tithes; and thus the relation between patrons and incumbents was analogous to that of lord and tenant by the feudal law. *Seld. of Tithes*, 86, &c.

Tithes are of several kinds.

Tithes, with regard to their several kinds or natures, are divided into *prædial*, *mixed*, and *personal*. *Prædial* tithes are such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruit, herbs: for a piece of land or ground being called in Latin *prædium* (whether it be arable, meadow, or pasture), the fruit or produce thereof is called *prædial*, and consequently the tithe payable for such annual produce, is called a *prædial* tithe. *Mixed* tithes are those which do not arise immediately from the ground, but from things nourished by the ground, as by means of goods depastured thereon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chickens, milk, cheese, eggs. *Personal* tithes are such profits as arise by the honest labour, and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain, after charges deducted.

Great and small tithes

Great tithes are chiefly corn, hay, and wood.—Small tithes are the *prædial* tithes of other kinds, together with those which are called *mixed* and *personal*.—Offerings, oblations, and obventions, are the customary payments for communicants at Easter, for marriages, christenings, churching of women, burials, and such like.

Demand to be made.

Of these demand must first be made, and if any person shall fail in the payment of the same, by the space of twenty days after such demand, the person to whom the same shall be due, may make complaint in writing to two justices of the peace, neither of whom is patron of the church or chapel, nor interested in the tithes. 7 and 8 *W. c. 6*.

But such complaint must be *in writing*; for, in the case of *K. v. Furness*, *H. 6 G.* order for non-payment of small tithes was quashed, because said only *upon complaint* generally, the statute requiring the complaint to be *in writing*. *Str. 264*.

Justices hear and determine.

Hereupon the said justices may summon in writing under their hands and seals, by reasonable warning, every person against whom such complaint shall be made.—And after appearance, or default of appearance (the warning or summons being proved upon oath) the said justices shall

shall proceed to hear and determine the complaint: and give in writing under their hands and seals, such compensation as they shall judge to be just and reasonable; and also such costs and charges, not exceeding 10s. as upon the merits of the cause shall appear just and reasonable, 7 and 8 *W. c. 6.*

And they may give costs, not exceeding 10s. to the party prosecuted, if they shall find the complaint to be false and vexatious. *Id.*

And if any person shall refuse or neglect by the space of Distress. ten days after such notice given, to pay or satisfy such sum adjudged; the constables and churchwardens, or any one of them, shall, by warrant under the hands and seals of the said justices, distrain his goods.

But if, on hearing the complaint, any person com- Pleading an
plained against shall insist on a prescription, composition, exemption,
modus decimandi, agreement, or title, whereby he ought to be freed from the payment of the tithes, and deliver the same in writing to the justices, subscribed by him, and shall then give the party complaining security to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law shall be given against him; then the said justices shall forbear to give judgment. 7 and 8 *W. c. 6.*

By the 27 *G. II. c. 20.* the distress shall be detained not less than four days, nor more than eight; and the officers may deduct the charges not only of making and keeping the distress, but also of the sale.

Any person aggrieved by the judgment of the justices, Appeal. may appeal to the next sessions. 7 and 8 *W. c. 6.*

Where any quaker shall refuse to pay or compound for Quakers
the same, any parson, vicar, or other person who ought refusing.
to receive or collect any such tithes, rates, dues, or payments, may make complaint to any two justices, other than such as is patron, or any way interested in the tithes. 1 *G. 3. c. 6.*

Upon which complaint the justices shall summon in writing under their hands and seals, by reasonable warning, such quaker.—And may proceed to examine the truth of the complaint, and to ascertain and state what is due and payable. *Id.*

And by order under their hands and seals, they may direct and appoint the payment thereof; so as the sum ordered (as is aforesaid) do not exceed 10l.—And also

Way or Passage.

such costs and charges, as they shall think reasonable, not exceeding 10s. *Id.*

And on refusal to pay, it shall be lawful for any one of the two next justices, by warrant under his hand and seal, to levy the same by distress and sale, rendering the overplus, the necessary charges of distraining being thereout first deducted and allowed by the said justice; unless it be in the case of appeal, and then no warrant of distress shall be granted, till after the appeal shall be determined. *Id.*

By the statute of the 27 G. II. c. 20. which in all other cases gives the justices power, in their warrant of distress, to order the goods distrained to be detained for a certain time, not less than four nor more than eight days, the tithes and church-rates of quakers are excepted.

It appears therefore, that church-rates not paid by quakers, may be recovered before two justices of the peace, in like manner as their tithes. See 7 and 8 W. c. 34. 1 G. I. §. 2. c. 6.

TURNIPS. See title CABBAGES.

WAY OR PASSAGE.

Immemorial usage.

Operation of law.

A WAY may be by prescription, as if the owners and occupiers of such a farm have immemorially used to cross another's ground; for this immemorial usage supposes an original grant. A right of way may also arise by act and operation of law; for if a man grants to another a piece of ground in the middle of his field, he at the same time tacitly gives him a way to come at it; for where the law gives any thing to any person, it gives impliedly whatever is necessary for enjoying it. 2 Black. 35.

It was recently decided, viz. *M. 39 G. III.* In the case of *Howton v. Frearson*, that if A convey land to B, to which there is no access but over A's land, a right of way passes of necessity, as incidental to the grant. 8 Durnf. & East, 50.

And if the owner of two closes, having no way to one of them but over the other, part with the latter without reserving the right of way, it will be reserved for him by operation of law. 8 Durnf. & East, 56.

Way is classed by *Blackstone* among incorporeal hereditaments. In such private ways, a particular man may have an interest and a right, though another be the owner of the soil.

An order made by justices of the peace, under the stat. 13 G. III. c. 78. §. 19, for stopping up an old foot-way, and setting out a new one, must follow the form prescribed in the schedule annexed to the act, and set forth the length and breadth of the new foot-way: otherwise it is no answer to a justification of a right of way pleaded to an action of trespass *quare clausum fregit*, brought by the owner of the soil over which the old way led. The statute requires that the form set forth in the schedule, "shall be used on all occasions, with such additions and variations *only* as may be necessary to adapt it to the particular exigency of the case." Under these words a material variance from the form prescribed is fatal, and may be taken advantage of in a collateral proceeding. *Davison and another v. Gill, Mich. 41. G. III.*

Stopping
up an old
foot-way.

If a man has a right of way over another's land, and the way becomes impassable by the overflowing of a river, he cannot justify going over the adjoining land, unless the owner of the land is bound, by prescription, or in his own grant, to repair the way. But if public highways are foundrous, passengers are justified, from principles of convenience and necessity, in turning out upon the land next the road. *Doug. 716.*

When a
way is
overflowed.

WEIGHTS AND MEASURES.

A STANDARD of weights and measures is to be kept in market towns, at which balance all the inhabitants may freely weigh without paying any thing; and justices, mayors, bailiffs, and stewards of franchises may inquire of offenders against this ordinance, and do execution of them that be found faulty. 8 H. VI. c. 5. 11 H. VII. c. 4.

The mayor, and other head officers in market towns, shall twice a year, or oftener, cause all weights and measures within the same, to be brought before them, and examined; and such as they find defective, to be broken and burnt; and the offender shall forfeit to the mayor or other officer, for the first time, 6s. 8d. for the second 13s. 4d. and for the third 20s. and be set on the pillory.

And, by the 16 C. c. 19, whosoever shall sell by any other weight, measure, or yard, not according to the standard, or keep any such whereby any thing is bought or sold, shall forfeit 5s. on conviction before one justice, or mayor, on oath of one witness; to be levied by the churchwardens

churchwardens and overseers, or some of them, to the use of the poor, by distress.—In default of distress, imprisonment till paid.

Justices required to appoint persons to examine weights & balances.

By 35 *G. III. c. 102*, the justices in quarter sessions in every county, are required to appoint persons to examine the weights and balances within their respective jurisdictions. These inspectors may seize and examine weights in shops, &c. and seize false weights and balances; and the offender, being convicted before one justice, shall be fined from 20s. to 5s. Persons obstructing the inspectors, to forfeit from 40s. to 5s. Inspectors to be recompensed out of the county-rate. Standard weights to be purchased by the sessions out of the county rate, and produced to all persons paying for the production thereof. Information to be within one month. This act not to infringe on the authority of corporations, courts-leets, &c. But persons punished by this act are not to suffer under any other statute or law.

Remark.

N. B. It is to be lamented that this modern statute, or some other of a similar import, is not more attended to; for, to the scandal of some mercenary tradesmen, the poor (in particular) are much imposed on by false weights and balances. See *MILLERS*, and the statute 36 *G. III. c. 86*, to prevent the abuses and frauds in the packing, weight, and sale of butter. Also 10 *G. III. c. 23*, for regulating weights, balances, and measures in *Marybone*; by means of inspectors appointed by the commissioners of paving, &c.

Dr. Burn observes, that notwithstanding the punishments aforesaid, appointed by statute, for selling by false weights and measures; the same is also an offence at the common law, and consequently may be punished by indictment, fine, and imprisonment.

See *BUTTER, CHEESE*.

WITNESSES.

BY the 27 *G. III. c. 29*. It is enacted, that the inhabitants shall be deemed competent witnesses for the purpose of proving the commission of any offence within the limits of any parish, township, or place, notwithstanding the penalty incurred by such offence, or any part thereof, may be given or applicable to the poor of such parish, township, or place, or otherwise for the benefit or use, or in aid or exoneration of such parish, township, or place, provided the penalty to be recovered doth not exceed the sum of twenty pounds.

WOOD.

WOOD,

BY the 43 *Eliz. c. 7. s. 1.* Every person robbing any Robbing
orchards or gardens; or breaking or cutting any hedges, orchards or
pales, rails, or fence; or digging, pulling up, or taking gardens,
up any fruit-tree, in any orchard, garden, or elsewhere, breaking
to the intent to carry the same away; or cutting or spoil- hedges,
ing any woods or underwoods, poles, or trees standing taking up
(the same not being felony by the laws of this realm); fruit-trees,
every such person, his procurers and receivers, knowing spoiling
the same, being thereof convicted by confession, or oath woods
of one witness, before one justice, shall give to the party growing.
such recompence for damages, and within such time as
the said justice shall appoint; and the same to be only for
the first fault: and if such offender shall be thought by
the justice not able, or do not make such recompence, he
shall commit him to the constable where the offence shall
be committed, or the party apprehended, to be whipped.
And for every such offence such offender to receive the said
punishment of whipping.

Not being felony by the laws of this realm.] The distinc-
tion here seems to be this: If they are annexed to the
freehold, as trees growing, or apples growing on the trees,
then the taking and carrying them away is not felony, but
a trespass, for a man cannot steal a part of the freehold;
but if they are severed from the freehold, as wood cut, or
apples gathered from the trees, then the taking of them is
not a trespass only, but felony. 4 *Burn.* 414.

The 25 *C. II. c. 2*, enacts, 'That the constable may ap- Stealing or
prehend, or cause to be apprehended, every person he taking of
shall suspect, having or carrying any burden of any kind wood, un-
of wood, underwood, poles, young trees, bark, bast of derwood,
any trees, or any gates, stiles, posts, pales, rails, or hedge hedge-
wood, broom or furze; and by warrant of one justice wood,
directed to any officer, such officer may enter into and poles, &c.
search the houses, or other places belonging to the houses
of every person he shall suspect to have any kind of wood;
and where he shall find any such; may apprehend the per-
sons suspected of cutting and taking the same; and take
the persons apprehended carrying, as well as those in
whose houses or other places the same shall be found, be-
fore one justice. And if any person shall not then and
there give a good account how he came by the same, such
as shall satisfy the said justice; or shall not in some con-
venient time, to be appointed by the said justice, produce
the

the party of whom he bought the same, or some credible witness to depose upon oath such sale thereof, he shall be convicted of cutting and spoiling the same, and punished as by the said act of the 43 *Eliz. c. 7.* and further by this act. That is to say:

Punish-
ment by
15 C. II.

He shall for the first offence give the owner such recompence for damages, and within such time as the justice shall appoint; and he shall also pay down presently to the overseers for the use of the poor, such sum not exceeding 10*s.* as the justice shall think proper; and if he shall not make such recompence, and pay the said sum to the poor, the said justice shall commit him to the house of correction for not exceeding one month, or to be whipped by the constable. And if he shall again commit the said offence, and be thereof convicted as before, he shall be sent to the house of correction for one month, there to be kept to hard labour. And if he shall be again convicted of the said offence, as before, he shall be deemed an incorrigible rogue.

Prosecu-
tion to be
in six
weeks.

But no person shall be punished by this act, who shall not be questioned in six weeks after the offence committed.

Cutting,
taking, or
destroying
nurseries,
timber-
trees or
other wood,
growing
where the
offender is
not known.

If any person shall, by day or night, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any wood springs, poles, wood, tops of trees, underwoods, or coppice-woods, thorn, or quicksets, without the consent of the owners thereof; or shall break open, throw down, level or destroy any hedges, fences, dykes, or other inclosures thereof; the owner may have such recompence from the inhabitants of the parishes, towns, hamlets, villages, or places, joining on such wood springs, or wood grounds, and recover such damages, against such place or places, and in the same manner and form as by the 13 *Ed. I. §. 1. c. 46.* Unless the offender, by such parishes or places, be convicted in six months.—This is to be understood, if the offender is not known. 1 *G. §. 2. c. 18.* 6 *G. c. 6.*

Where the
offender is
known.

But if the offender is known, it is enacted as follows: viz. If any offender shall, in a riotous, open, tumultuous, or in a secret or clandestine manner, forcibly, or wrongfully and maliciously, and without consent of the owner, or person chiefly intrusted with the care thereof, cut down, destroy, break, bark, throw down, burn, take, deface, spoil, or carry away, any wood, or springs of wood, underwood, or coppice wood; or break open,
throw

throw down, level, or destroy any hedges, gates, posts, stiles, rails, fences, ditches, banks, or inclosures of such woods, woody grounds, coppices, plantations, timber-trees, fruit-trees, or other trees, thorns, or quicksets; two justices, or the justices in sessions, on complaint made by any inhabitant of such parish or place, or by the owner of the wood, or by any other, may cause the offender to be apprehended, and hear and determine the offence; and on conviction, shall commit such offender to the house of correction to hard labour for three months; and where there is no house of correction, to the prison for four months, and shall also order him to be publicly whipped by the master of such house of correction once a month, during such three months, if it is in a borough, or in the market-town where such house of correction stands, or in a market-town next adjacent to such house of correction, on the market day, between the hours of eleven and two. And where there is no house of correction, the said justices shall order him to be whipped by the common hangman once a month, during such four months, on the market day of such borough, or on the market day of some town, between eleven and two. And before he shall be discharged, he shall find sufficient sureties for his good behaviour for two years.

And by the 29 G. II. c. 36. §. 8. Any person who shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any tree growing in any waste, wood, or pasture, in which any person has right of common, shall be in like manner convicted, and incur the like penalty, as by the 6 G. §. 2. c. 48.

The 6 G. III. c. 48, enacts, That every person who shall wilfully cut, or break down, bark, burn, pluck up, top, top, crop, or otherwise deface, damage, spoil, or destroy, or carry away, any timber tree or trees, or trees likely to become timber, or any part thereof, or the tops or tops thereof, without the consent of the owner, (or in any of his majesty's forests or chases, without the consent of the surveyor, or his deputy, or persons intrusted with the care thereof,) and shall be thereof convicted, on the oath of one witness before one justice, shall, for the first offence, forfeit not exceeding 20*l.* with the charges previous to, and attending such conviction, to be ascertained by such justice; and on non-payment thereof, to be committed by him to the common gaol, for not exceeding twelve

fault of distrefs, to commit the party to gaol at his own charge, there to remain one month without bail.

Setting fire
to wood,
felony-

By the 1 G. 2. c. 48. Any person who shall maliciously set on fire, or burn, or cause to be burnt, any wood, underwood, or coppice, or any part thereof; shall be guilty of felony. *f. 4.*

Wastes for
woods may
be purchas-
ed for the
poor.

By the 29 G. II. c. 36. Where the inhabitants of any parish or township shall be willing to acquire a right of inclosure of wastes for the employment and benefit of their poor, they may (by the consent and direction of the major part of the inhabitants assembled at a vestry or public meeting to be held for that purpose, public notice thereof in the church being first given on three Sundays before) pay the recompence for the same, and the charges of *inclosing* and *preserving* such grounds out of the poor rate; and shall apply the profit from the sale of such timber or underwood, towards the relief of the poor.

Note. Here is only an allowance for the charges of *inclosing* and *preserving* the grounds, not for the charges of *planting*.

The agreement for such inclosure shall be in writing, and signed by the parties, and within three months after the execution thereof be enrolled by the clerk of the peace where the greater part of such wastes, woods, or pastures, shall lie.

Appeal.

Persons aggrieved by such agreement may within six months after the enrollment appeal to the sessions, whose determination shall be final.

To prevent
the destruc-
tion of
wood in
forests.

By the 4 G. III. c. 31, it shall be lawful for every surveyor of his majesty's woods, and his lawful deputy, and for the officers and keepers of any forest or chase (besides the penalties for destroying the trees or underwood) to seize and take away for his own use, any saw, axe, hatchet, bill-hook, or other instrument used by any person whom they shall find unlawfully stocking up, sawing, cutting down, topping, lopping, or destroying, any timber or other tree, underwood, or covert, within such forest or chase.

Exporting
wood.

By the 1 and 2 P & M. c. 5. *f. 2.* No person shall carry any wood out of the realm, on pain that the owner of the ship shall forfeit such ship and tackle; the owner of the wood, double the value of such wood; and the master and mariners all their goods, and be imprisoned for a year.

Taking
wood to
any ship.

And if a person shall carry wood to any ship, to be transported,

Woolcombers; Working in Harvest.

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transported, the owners, masters, and mariners; shall forfeit in like manner. *Id.* § 3.

Wool, see Title SHEEP.

WOOLCOMBERS.

BY the 35 G. III. c. 124. all those who have served an apprenticeship to the trade of a woolcomber, or who are, by law, entitled to exercise the same, and also their wives and children, may set up and exercise such trade, or any other trade or business they are apt and able for, in any town or place within this kingdom, without any molestation; nor shall such woolcombers, their wives or children, while they exercise such trades, be removeable from such place to their last legal settlement, till they shall become actually chargeable to such parish.

Woolcombers may set up in any town except Oxford and Cambridge.

But this act shall not be prejudicial to the privileges of the universities of *Oxford* or *Cambridge*, or empower persons to sell wine or other liquors therein, without licence first had from the vice-chancellor.

WORKING IN HARVEST.

BY the 5 Eliz. c. 4. § 22. In the time of hay or corn harvest, the justices, and every of them, and also the constable or other head officer of every township, on request, and to avoid the loss of any corn, grain, or hay, shall cause such artificers and persons as are meet to labour, by the discretion of such justices or constables, or other head officers, or by any of them, to serve by the day, for mowing, reaping, shearing, getting, or inning of corn, grain, and hay, according to the skill and quality of the person; and none of the said persons shall refuse so to do, on pain to suffer imprisonment in the stocks, by the space of two days and one night: and the constable of the town, or other head officer, on complaint to him made, shall set him in the stocks accordingly, on pain of 40s. half to the king, and half to him who shall sue in the sessions, or other court of record; and if in a town corporate, then to the use of such town, as other fines by the charter.

Artificers, &c. compellable to work in harvest.

A person may go abroad to work in harvest, carrying with him a certificate from the minister and one churchwarden or overseer, that he hath a dwelling-house or place,

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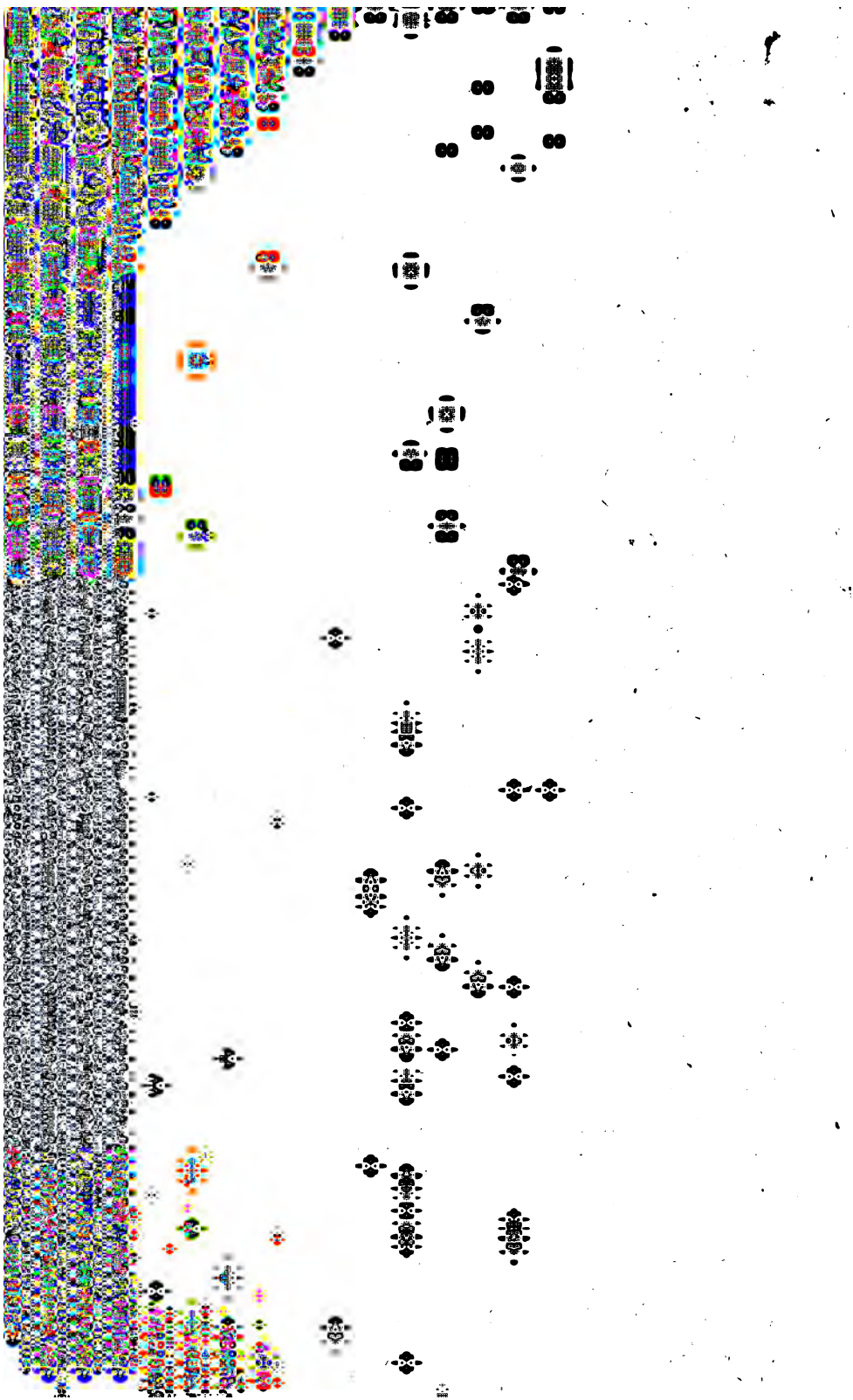
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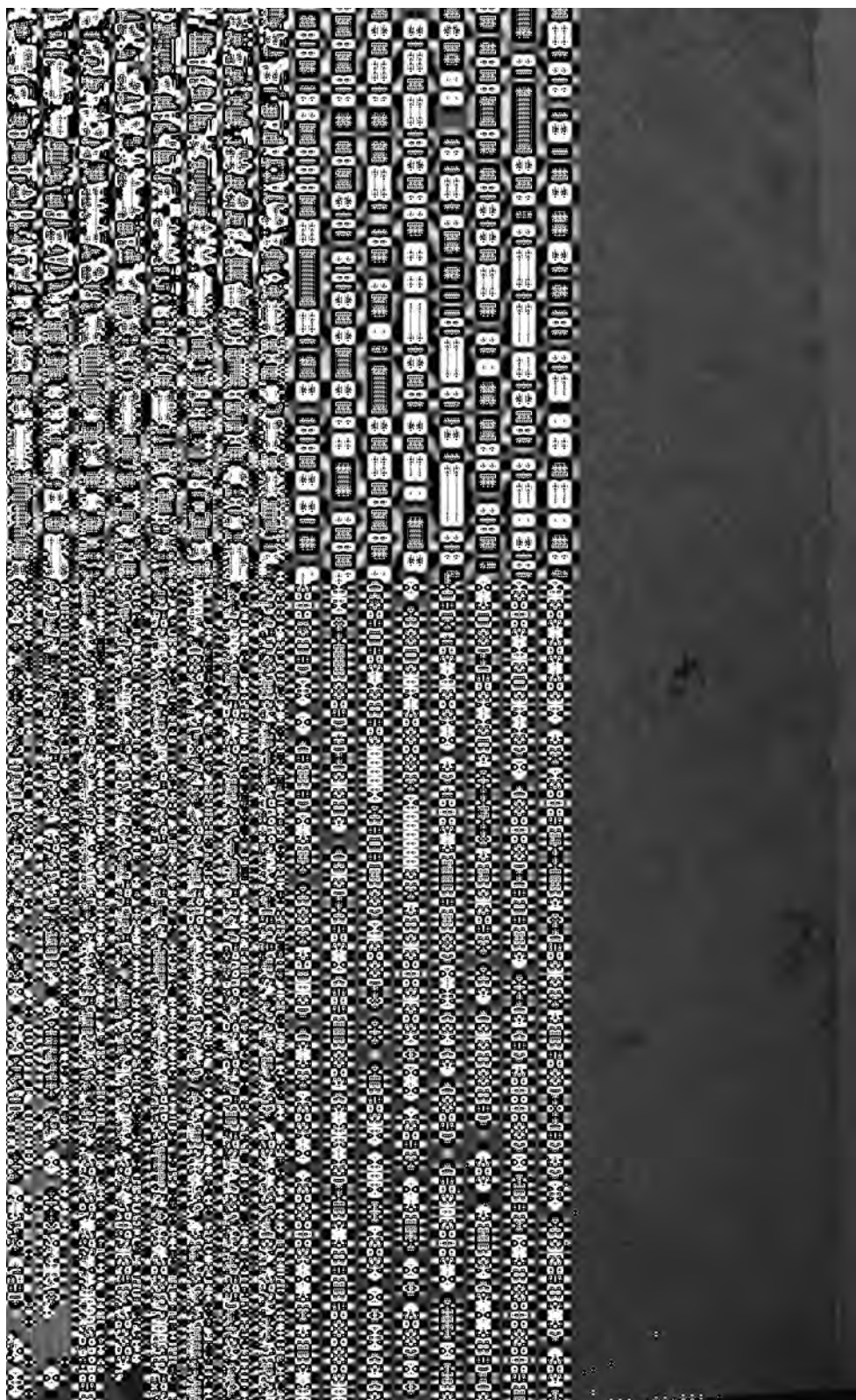
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